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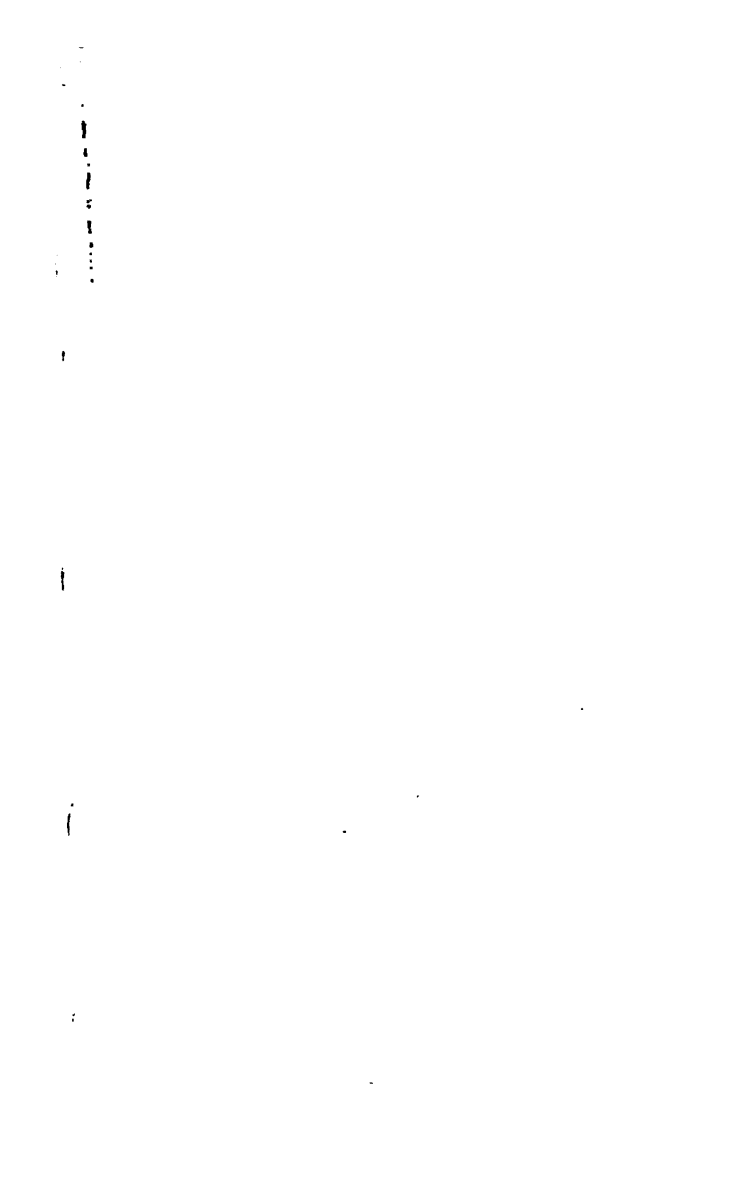
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THE
CONSTITUTION

OF THE

State of California

ADOPTED IN 1879,

WITH

REFERENCES TO SIMILAR PROVISIONS IN THE CONSTITUTIONS OF OTHER STATES,

AND TO

The Decisions of the Courts of the United States, the Supreme Court of California, and the Supreme Courts of such other States as have Constitutional Provisions similar to those of California.

TO WHICH IS PREFIXED THE

CONSTITUTION OF THE UNITED STATES AND A PARALLEL ARRANGEMENT OF THE CONSTITUTIONS OF 1863 AND 1879.

BY

ROBERT DESTY.

0

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BANCROFT-WHITNEY COMPANY.
1893.

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PREFACE.

The Constitution of California adopted in 1849, with its amendments of 1856, 1862, and 1871, was superseded by the new Constitution, adopted on the 7th day of May, 1879, which was intended to meet the advanced condition of the State and the requirements of a progressive community. For convenience of comparison, the compiler has collated the old and the new organic instruments, placing them side by side, that the reader may at a glance discover wherein they differ. Following this is the text of the new Constitution, each section of which is followed by a reference to the Constitutions of other States having similar provisions in their organic laws, the language of which in many instances is identical. In such cases, the decisions of the Supreme Courts of these States will be of great weight in settling the construction of the language used in our own organic law. As many of the changes were of a radical nature, the author has endeavored to note all decisions of United States Courts and of the Supreme Courts of the various States which seem to bear upon the points involved in our new organic law. The notes, though greatly condensed, it is believed clearly express the ultimate principles decided by the courts in the cases referred to.

The compiler has endeavored to faithfully execute his work of annotation, and now presents to the public the result of his labor, in the hope that it will meet with appreciative favor.

ROBERT DESTY.

NOVEMBER, 1879.



THE
Constitution
OF THE
UNITED STATES.

Ed. Mar. 1934

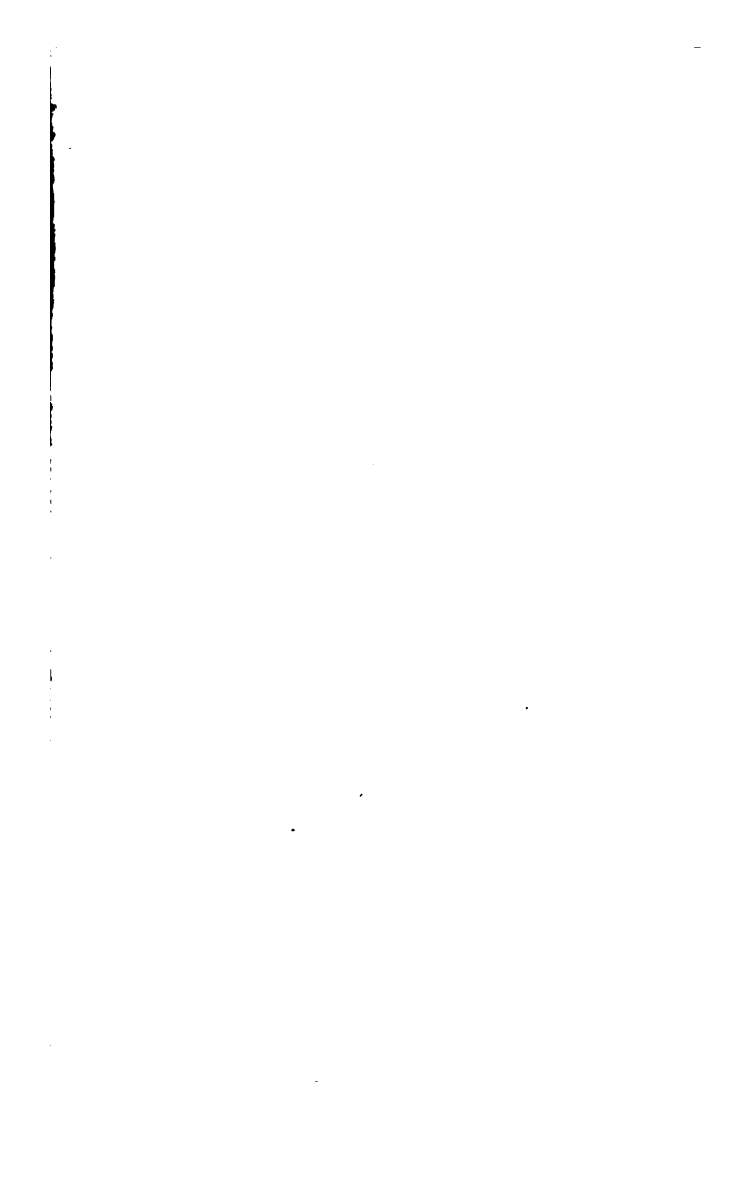
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Art. I, Sec. 5.—Continued.

smaller number may adjourn and compel attendance.

penalties may be prescribed for non-attendance.

2. Each house may determine rules of its proceedings. may punish for disorderly behavior.

with concurrence of two-thirds may expel.

3. Each house shall keep a journal of proceedings.

may publish the same.

yeas and nays to be entered on record of one-fifth.

4. Neither house shall adjourn for more than three days without consent of the other.

nor to any other place than that in which they are sitting.

SEC. 6.—1. Compensation for services to be fixed by law.

to be paid out of U. S. Treasury.

Members to be privileged from arrest during the session.

except for treason, felony, and breach of peace.

to be privileged in going to and returning from the sessions.

for speech or debate not to be questioned elsewhere.

2. No member to be eligible for a civil office under Government created or increased in emoluments during his term.

no person holding U. S. office to be eligible as a member.

SEC. 7.—1. Bills for raising revenue to originate in the House; but the Senate may propose or concur with amendments.

2. Every bill to be presented to the President for his approval.

if returned, objections to be entered on the journal.

and to be reconsidered.

on concurrence of two-thirds, the bill to be sent to other house.

if approved by two-thirds, to become a law.

the vote of both houses to be by yeas and nays.

names of members voting to be entered on journals.

if bill not returned by President in ten days, to be a law, unless Congress, by adjournment, prevent the return.

3. Concurrent resolutions to be presented to the President except on question of adjournment.

if disapproved, require two-thirds to pass them.

SEC. 8.—1. Congress shall have power to lay and collect taxes, duties, imposts, and excises.

to pay debts and provide for common defense and general welfare.

all duties, imposts, and excises to be uniform.

2. to borrow money on credit of U. S.

3. to regulate commerce

with foreign nations,
among the several States,
and with the Indian tribes.

4. to establish uniform rule of naturalization, and uniform laws on subject of bankruptcies.

5. to coin money and regulate its value, and fix the standard of weights and measures

Art. I, Sec. 8.—Continued.

6. to provide for punishment of counterfeiting securities and coin of U. S.
7. to establish post-offices and post-roads.
8. to promote progress of science and useful arts by securing to authors and inventors exclusive rights.
9. to constitute tribunals inferior to Supreme Court.
10. to define and punish piracies and felonies on high seas, and offenses against law of nations.
11. to declare war,
grant letters of marque and reprisal,
and make rules concerning captures.
12. to raise and support armies.
appropriations to be limited to two years.
13. to provide and maintain a navy.
14. To make rules for government of land and naval forces.
15. To provide for calling forth the militia.
to execute laws, suppress insurrections, etc.
16. To provide for organizing and arming the militia.
and for governing them when in employ of Government.
authority of States as to appointment of officers reserved.
also as to disciplining militia.
17. To exercise exclusive legislation over seat of government.
and over sites of public works or buildings.
18. To make all laws necessary and proper to carry out its powers.

Sec. 9.—1. Migration or importation of slaves, restriction of.
tax or duty may be imposed.

2. *Habeas corpus* not to be suspended except.
3. No bill of attainder or *ex post facto* law to be passed.
4. No direct tax unless in proportion to census.
5. No tax or duty on exports from any State.
6. No preference to be given in commerce or revenue to ports of any State.
no entry, clearance, or duties on vessels bound to or from States.
7. Money to be drawn only on appropriations made by law.
statements of receipts and expenditures to be published.
8. No title of nobility to be granted.
no officer to accept presents from foreign powers.

Sec. 10.—1. No State to enter into any treaty, alliance, or confederation.

- or grant letters of marque and reprisal.
or coin money.
or emit bills of credit.
or make anything but gold and silver a legal tender.
or pass any bill of attainder.
or *ex post facto* law.
or law impairing obligation of contract.
or grant any title of nobility.
2. No State, without consent of Congress, shall lay any imposts or duties.
except absolutely necessary.
and the net produce to be for use of Government.
and the laws subject to revision of Congress.

Art. I, Sec. 10.—Continued.

3. No State, without consent of Congress, to lay duty on tonnage.
 or keep troops or ships of war in time of peace.
 or enter into any agreement or compact with other States, or with a foreign power.
 unless actually invaded or in imminent danger.

ARTICLE II.

- SEC. 1.—1.** The executive power is vested in a President.
 his term of office shall be four years.
 the term of office of Vice-President shall be the same.
 they shall be elected together.
2. Each State shall appoint Presidential electors.
 to be in number equal to the whole number of their Senators and Representatives.
 no Senator or Representative or public U. S. officer shall be an elector.
3. Manner of voting by electors.
 REPEALED. See XIIth Amendment.
4. Congress may determine time of choosing electors.
 and the day of their meeting to elect.
 to be the same throughout the U. S.
5. Natural-born citizens alone eligible for President.
 to have attained the age of thirty-five, and been fourteen years a resident.
6. The Vice-President to assume the duties of President in case of his death, resignation, etc.
 Congress may by law provide for the case of death, resignation, etc., of the President.
 and declare what officer shall then act.
7. The compensation of the President shall not be increased or diminished during his term of office.
 and he shall not receive during that period any other emolument.
8. Oath or affirmation of President.
- SEC. 2.—1.** President shall be Commander in Chief of Army and Navy.
 and of the Militia of the several States, when in service of the U. S.
 may require written opinions of executive officers.
 may grant reprieves and pardons, except in impeachments.
2. By and with consent of Congress, may make treaties.
 and shall nominate and appoint Ambassadors, etc.
 and all other officers whose appointments are not otherwise provided for.
 Congress may vest appointment of inferior officers as they think proper.
3. President may fill vacancies during recess of Senate.
- SEC. 3.—**President to give information of state of the Union.
 to recommend measures to Congress.
 on extraordinary occasions may convene Congress.
 in case of disagreement may adjourn Congress.
 to receive Ambassadors and Ministers.
 to take care that the laws are administered.
 to commission all officers of the U. S.

ARTICLE IV.

The right of security against searches and seizures shall not be violated.
warrants on probable cause to be supported by oath or affirmation.
the place, person, and thing to be described in the warrant.

ARTICLE V.

Presentment or indictment before grand jury essential to trial for crime.
except as to land or naval forces or militia in time of war.
no person to be put twice in jeopardy.
nor be compelled to be witness against himself.
nor be deprived of life, liberty, or property without due process of law.
nor shall private property be taken for public use without compensation.

ARTICLE VI.

In criminal trials, accused shall have the right to a speedy and public trial.
by a jury, of State and district where crime was committed.
and to be informed of the nature and cause of accusation.
and to be confronted with witnesses against him.
and to have compulsory process for witnesses in his favor.
and to have the assistance of counsel for his defense.

ARTICLE VII.

In civil actions, the right of trial by jury shall be preserved where the value in controversy exceeds twenty dollars.
facts tried by jury are re-examinable only according to the rules of common law.

ARTICLE VIII.

Excessive bail shall not be required.
nor excessive fines imposed.
nor cruel nor unusual punishments inflicted.

ARTICLE IX.

The enumeration of rights not to disparage others retained by the people.

ARTICLE X.

Powers not delegated nor prohibited to the States are reserved to the States or to the people.
DESTY · FED. CON.—3.



THE
Constitution
OF THE
UNITED STATES.



Constitution

OF THE

UNITED STATES.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2. ¹The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the ~~most numerous~~ Branch of the State Legislature.

²No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States. and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

³[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative ; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

⁴When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

⁵The House of Representatives shall chuse their Speaker and other Officers ; and shall have the sole Power of Impeachment.

SECTION. 3. ¹The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years ; and each Senator shall have one Vote.

²Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year ; and if Vacancies happen by Resignation, or otherwise, during the

Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

²No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

⁴The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

⁵The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

⁶The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

⁷Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. ¹The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

²The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. ¹Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

²Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

³Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

⁴Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. ¹The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

²No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

→ SECTION 7. All Bills for raising Revenue shall

originate in the House of Representatives ; but the Senate may propose or concur with Amendments as on other Bills.

²Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States ; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

³Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States ; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. ¹The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States ; but all Duties, Imposts and Excises shall be uniform throughout the United States ;

²To borrow Money on the credit of the United States ;

³To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes ;

⁴To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States ;

⁵To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures ;

⁶To provide for the Punishment of counterfeiting the Securities and current Coin of the United States ;

⁷To establish Post Offices and post Roads ;

⁸To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries ;

⁹To constitute Tribunals inferior to the supreme Court ;

¹⁰To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations ;

¹¹To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water ;

¹²To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years ;

¹³To provide and maintain a Navy ;

¹⁴To make Rules for the Government and Regulation of the land and naval Forces ;

¹⁵To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions ;

¹⁶To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training

the Militia according to the discipline prescribed by Congress ;

¹⁷To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings ;—And

¹⁸To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof ;

SECTION. 9. ¹The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

²The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

³No Bill of Attainder or ex post facto Law shall be passed.

⁴No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

⁵No Tax or Duty shall be laid on Articles exported from any State.

⁶No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another : nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

⁷No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law ; and

a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

⁸No Title of Nobility shall be granted by the United States : and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. ¹No State shall enter into any Treaty, Alliance, or Confederation ; grant Letters of Marque and Reprisal ; coin Money ; emit Bills of Credit ; make any Thing but gold and silver Coin a Tender in Payment of Debts ; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

²No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws : and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States ; and all such Laws shall be subject to the Revision and Controul of the Congress.

³No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE. II.

SECTION. 1. ¹The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

²Each State shall appoint, in such Manner as the

Legislature thereof may direct, a Number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress : but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

*[“The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each ; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed ; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President ; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote ; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.”]

This Clause has been superseded by the twelfth amendment, p. 35.

⁴The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes ; which Day shall be the same throughout the United States.

⁵No Person except a natural born Citizen, or a Citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the Office of President ; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

⁶In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

⁷The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

⁸Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation :—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2. ¹The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States ; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any

Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

²He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

³The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. ¹The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority ; —to all Cases affecting Ambassadors, other public Ministers and Consuls ; —to all Cases of admiralty and maritime Jurisdiction ; —to Controversies to which the United States shall be a Party ; —to Controversies between two or more States ; —between a State and Citizens of another State ; —between Citizens of different States, —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

²In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

³The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury ; and such Trial shall be held in the State where the said Crimes shall have been committed ; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. ¹Treason against the United States, shall consist only in levying War against them, or in

adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

²The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. ¹The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

²A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

³No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. ¹New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

²The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States ; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion ; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress ; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article ; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

¹All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

²This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ; and

all Treaties made, ~~or~~ which shall be made, under the Authority of the United States, shall be the supreme Law of the Land ; and the Judges in every State shall be bound thereby, any Thing to the Constitution or Laws of any State to the Contrary notwithstanding.

*The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution ; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independance of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

G^o : WASHINGTON—

Presidt. and Deputy from Virginia

New Hampshire.

JOHN LANGDON

NICHOLAS GILMAN

Massachusetts.

NATHANIEL GORHAM

RUFUS KING

Connecticut.

WM. SAML. JOHNSON

ROGER SHERMAN

New York.

ALEXANDER HAMILTON

*New Jersey.*WIL : LIVINGSTON
DAVID BREARLEYWM. PATERSON
JONA : DAYTON*Pennsylvania.*B. FRANKLIN
THOMAS MIFFLIN
ROBT. MORRIS
GEO. CLYMERTHOS. FITZSIMONS
JARED INGERSOLL
JAMES WILSON
GOUV MORRIS*Delaware.*GEO : READ
GUNNING BEDFORD JUN
JOHN DICKINSONRICHARD BASSETT
JACO : BROOM*Maryland.*JAMES MCHENRY
DAN OF ST THOS JENIFER

DANL. CARROLL

Virginia.

JOHN BLAIR—

JAMES MADISON Jr.

*North Carolina.*WM. BLOUNT
RICHD. DOBBS SPAIGHT

HU WILLIAMSON.

South Carolina.

J. RUTLEDGE,

CHARLES PINCKNEY
PIERCE BUTLER.

CHARLES COTESWORTH PINCKNEY

Georgia.

WILLIAM FEW

ABE BALDWIN

Attest

WILLIAM JACKSON *Secretary*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE
CONSTITUTION OF THE UNITED STATES OF AMERICA,
PROPOSED BY CONGRESS, AND RATIFIED BY THE LEG-
ISLATURES OF THE SEVERAL STATES PURSUANT TO
THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]

Congress shall make no law respecting an establish-
ment of religion, or prohibiting the free exercise
thereof; or abridging the freedom of speech, or of the
press; or the right of the people peaceably to assem-
ble, and to petition the Government for a redress of
grievances.

[ARTICLE II.]

A well regulated Militia, being necessary to the secu-
rity of a free State, the right of the people to keep and
bear Arms, shall not be infringed.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in
any house, without the consent of the Owner, nor in
time of war, but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their per-
sons, houses, papers, and effects, against unreasonable
searches and seizures, shall not be violated, and no

Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[ARTICLE XI.]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

[ARTICLE XII.]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The Presi-

dent of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or

rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

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THE
Constitutions of California

Constitution of California.

ADOPTED BY THE CONVENTION, OCTOBER 10TH, 1849;
RATIFIED BY THE PEOPLE, NOVEMBER 13TH,
1849; PROCLAIMED, DECEMBER 20TH,
1849; AND AMENDED IN 1857,
1862, AND 1871.

PREAMBLE.

We, the people of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

§ 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.

§ 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

Constitution

OF THE

STATE OF CALIFORNIA

ADOPTED IN CONVENTION, AT SACRAMENTO, MARCH
3RD, A. D. 1879; RATIFIED BY A VOTE
OF THE PEOPLE ON WEDNESDAY,
MAY 7TH, 1879.

PREAMBLE AND DECLARATION OF RIGHTS.

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§ 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

§ 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

§ 3. The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

§ 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

§ 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

§ 7. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great.

§ 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained.

§ 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law.

§ 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

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§ 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions, and cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

§ 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

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§ 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances.

§ 11. All laws of a general nature shall have a uniform operation.

§ 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace; and, in time of war, no appropriation for a standing army shall be for a longer time than two years.

§ 13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

§ 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) unless on presentment or indictment of a Grand Jury; and, in any trial in any Court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

information laid, for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

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§ 13. In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court, for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law.

§ 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

§ 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

§ 17. Foreigners who are or who may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native born citizens.

§ 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

§ 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

§ 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

§ 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

§ 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud, nor in civil actions for torts, except in cases of willful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.

§ 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

§ 17. Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native-born citizens.

§ 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

§ 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

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§ 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

§ 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

§ 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

§ 24. No property qualification shall ever be required for any person to vote or hold office.

ARTICLE II.

RIGHT OF SUFFRAGE.

§ 1. Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the thirtieth day of May, eighteen hundred and forty-eight, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law; *provided*, that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage Indians, or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.

§ 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

§ 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

§ 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

§ 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

§ 6. All elections by the people shall be by ballot.

ARTICLE III.

DISTRIBUTION OF POWERS.

§ 1. The powers of the Government of the State of California shall be divided into three separate departments: the Legislative, the Executive, and Judicial; and

ARTICLE II.

RIGHT OF SUFFRAGE.

§ 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State.

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ARTICLE IV.

LEGISLATIVE DEPARTMENT.

§ 1. The Legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California, and the enacting clause of every law shall be as follows: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

§ 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than one hundred and twenty days. [1862.]

[Amended 1862. The original provided for annual sessions, beginning on first Monday of January.]

§ 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Wednesday in September, unless otherwise ordered by the Legislature, and their term of office shall be two years. [1862.]

[Amended 1862. The original provided for annual elections on the first Tuesday after the first Monday in November.]

§ 4. Senators and members of Assembly shall be duly qualified electors in the respective counties and districts which they represent.

§ 5. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly; and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State and of the county or district for which he shall be chosen one year next before his election.

[Amended 1862. Original made term of two years, and residence in county or district of six months.]

charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted.

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§ 2. The sessions of the Legislature shall commence at twelve o'clock m. on the first Monday after the first day of January next succeeding the election of its members, and, after the election held in the year eighteen hundred and eighty, shall be biennial, unless the Governor shall, in the interim, convene the Legislature by proclamation. No pay shall be allowed to members for a longer time than sixty days, except for the first session after the adoption of this Constitution, for which they may be allowed pay for one hundred days. And no bill shall be introduced, in either House, after the expiration of ninety days from the commencement of the first session, nor after fifty days after the commencement of each succeeding session, without the consent of two-thirds of the members thereof.

§ 3. Members of the Assembly shall be elected in the year eighteen hundred and seventy-nine, at the time and in the manner now provided by law. The second election of members of the Assembly, after the adoption of this Constitution, shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter, members of the Assembly shall be chosen biennially, and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature.

§ 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year, next before his election.

§ 6. The number of Senators shall not be less than one-third, nor more than one-half, of that of the members of the Assembly; and at the first session of the Legislature after this section takes effect, the Senators shall be divided by lot, as equally as may be, into two classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one-half shall be chosen biennially.

[Amended 1862. Original provided for annual election.]

§ 7. When the number of Senators is increased they shall be apportioned by lot, so as to keep the two classes as nearly equal in number as possible.

ARTICLE I.

§ 14. Representation shall be apportioned according to population.

ARTICLE IV.

§ 28. The enumeration of the inhabitants of this State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States, in the year one thousand eight hundred and fifty and every subsequent ten years, shall serve as the basis of representation in both Houses of the Legislature.

§ 29. The number of Senators and members of Assembly shall, at the first session of the Legislature holden after the enumerations herein provided for are made, be fixed by the Legislature, and apportioned among the several counties and districts to be established by law, according to the number of white inhabitants. The number of members of Assembly shall not be less than twenty-four, nor more than thirty-six, until the number of inhabitants within this State shall amount to one hundred thousand; and, after that period, in such ratio that the whole number of members of Assembly shall never be less than thirty nor more than eighty.

SCHEDULE.

§ 14. Until the Legislature shall divide the State into counties and Senatorial and Assembly Districts, as directed by this Constitution, the following shall be the

§ 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two from the odd-numbered districts shall be vacated at the expiration of the second year, so that one-half of the Senators shall be elected every two years; *provided*, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years.

§ 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty senatorial and eighty assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called senatorial and assembly districts. Each senatorial district shall choose one Senator, and each assembly district shall choose one member of Assembly. The senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the assembly districts shall be numbered from one to eighty, in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of such districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust such districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law.

apportionment of the two Houses of the Legislature, viz: The Districts of San Diego and Los Angeles shall jointly elect two Senators; the Districts of Santa Barbara and San Luis Obispo shall jointly elect one Senator; the District of Monterey, one Senator; the District of San José, one Senator; the District of San Francisco, two Senators; the District of Sonoma, one Senator; the District of Sacramento, four Senators; and the District of San Joaquin, four Senators. And the District of San Diego shall elect one member of the Assembly; the District of Los Angeles, two members of Assembly; the District of Santa Barbara, two members of Assembly; the District of San Luis Obispo, one member of Assembly; the District of Monterey, two members of Assembly; the District of San José, three members of Assembly; the District of San Francisco, five members of Assembly; the District of Sonoma, two members of Assembly; the District of Sacramento, nine members of Assembly; and the District of San Joaquin, nine members of Assembly.

ARTICLE IV.

§ 8. Each House shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

§ 9. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House may provide.

§ 10. Each House shall determine the rules of its own proceedings, and may, with the concurrence of two-thirds of all the members elected, expel a member.

§ 11. Each House shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the Journal.

§ 12. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

§ 7. Each House shall choose its officers, and judge of the qualifications, elections, and returns of its members.

§ 8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each House may provide.

§ 9. Each House shall determine the rule of its proceeding, and may, with the concurrence of two-thirds of all the members elected, expel a member.

§ 10. Each House shall keep a Journal of its proceedings, and publish the same, and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the Journal.

§ 11. Members of the Legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

§ 13. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

§ 14. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

§ 15. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

§ 16. Any bill may originate in either House of the Legislature, and all bills passed by one House may be amended in the other.

§ 17. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it, but if not he shall return it, with his objections, to the House in which it originated, which shall enter the same upon the Journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two-thirds of the members of each House present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall be a law, in like manner as if he had signed it, unless the Legislature, by adjournment, prevent such return.

§ 12. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

§ 13. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

§ 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting. Nor shall the members of either House draw pay for any recess or adjournment for a longer time than three days.

§ 15. No law shall be passed except by bill. Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each House, unless, in case of urgency, two-thirds of the House where such bill may be pending shall, by a vote of yeas and nays, dispense with this provision. Any bill may originate in either House, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each House.

§ 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, two-thirds of the members elected to each House voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If

§ 18. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

§ 19. The Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Surveyor General, Justices of the Supreme Court, and Judges of the District Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanors in office in such a manner as the Legislature may provide.

§ 20. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created or the emoluments of which shall have been increased during such term, except such offices as may be filled by election by the people.

§ 21. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia to which there is attached no annual salary, or local officers and Postmasters, whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

§ 22. No person who shall be convicted of the embezzlement or defalcation of the public funds of this State

any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

§ 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.

§ 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Chief Justice and Associate Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

§ 19. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which have been increased, during such term, except such offices as may be filled by election by the people.

§ 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia, who receive no annual salary, local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed to hold lucrative offices.

§ 21. No person convicted of the embezzlement or defalcation of the public funds of the United States, or of

shall ever be eligible to any office of honor, trust, or profit under this State; and the Legislature shall, as soon as practicable, pass a law providing for the punishment of such embezzlement or defalcation as a felony.

§ 23. No money shall be drawn from the Treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every regular session of the Legislature.

§ 24. The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public Treasury; but no increase of the compensation shall take effect during the term for which the members of either House shall have been elected.

§ 25. Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title and no law shall be revised or amended by reference

any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

§ 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State; *provided*, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that the State shall have, at any time, the right to inquire into the management of such institutions; *provided further*, that whenever any county, or city and county, or city, or town shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.

§ 23. The members of the Legislature shall receive for their services a per diem and mileage, to be fixed by law, and paid out of the public treasury; such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile, and for contingent expenses not exceeding twenty-five dollars for each session. No increase in compensation or mileage shall take effect during the term for which the members of either House shall have been elected, and the pay of no attaché shall be increased after he is elected or appointed.

§ 24. Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in

to its title; but in such case the Act revised or section amended shall be re-enacted and published at length.

ARTICLE XI.

§ 21. All laws, decrees, regulations, and provisions which from their nature require publication shall be published in English and Spanish.

ARTICLE IV.

§ 26. No divorce shall be granted by the Legislature.

its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be re-enacted and published at length as revised or amended; and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language.

§ 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of courts of justice

Fourth—Providing for changing the venue in civil or criminal actions.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting the estates of deceased persons, minors, or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

§ 27. No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.

§ 30. When a Congressional, Senatorial, or Assembly District shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county shall be divided in forming a Congressional, Senatorial, or Assembly District* so as to attach one portion of a county to another county; but the Legislature may divide each county into as many Con-
[Words following the * were added by amendment of 1862.]

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.

§ 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

§ 27. When a congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more

gressional, Senatorial, or Assembly Districts as such county may by apportionment be entitled to.

§ 38. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the journal.

ARTICLE XI.

§ 10. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association, or corporation; nor shall the State, directly or indirectly, become a stockholder in any association or corporation.

population than the ratio required for one or more Congressmen; but the Legislature may divide any county, or city and county, into as many congressional districts as it may be entitled to by law. Any county, or city and county, containing a population greater than the number required for one congressional district, shall be formed into one or more congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached by compact adjoining assembly districts, to a contiguous county or counties, and form a congressional district. In dividing a county, or city and county, into congressional districts, no assembly district shall be divided so as to form a part of more than one congressional district, and every such congressional district shall be composed of compact contiguous assembly districts.

§ 28. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

§ 29. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State.

§ 30. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.

§ 31. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corpora-

ARTICLE I.

§ 22. The Legislature shall have no power to make an appropriation, for any purpose whatever, for a longer period than two years.

[§ 22 was added by amendment, proposed in 1866, and ratified September 6th, 1871.]

tion, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

§ 32. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

§ 33. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage, in which there is a public use; and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

§ 34. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

§ 35. Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, who shall be influenced in his vote or ac-

ARTICLE V.

EXECUTIVE DEPARTMENT.

§ 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of California.

§ 2. The Governor shall be elected by the qualified electors, at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the first Monday in December subsequent to his election, and until his successor is elected and qualified.

[Amended 1862. Original provided for term of two years.]

§ 3. No person shall be eligible to the office of Governor (except at the first election) who has not been a citizen of the United States and a resident of this State two years next preceding the election, and attained the age of twenty-five years at the time of said election.

§ 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in presence of both Houses of the Legislature. The person having the highest number of votes shall be Governor; but, in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both Houses, choose one of said persons so having an equal and the highest number of votes, for Governor.

tion upon any matter pending before the Legislature by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

ARTICLE V.

EXECUTIVE DEPARTMENT.

§ 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

§ 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the first Monday after the first day of January subsequent to his election, and until his successor is elected and qualified.

§ 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding his election, and attained the age of twenty-five years at the time of such election.

§ 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in the presence of both Houses of the Legislature. The person having the highest number of votes shall be Governor; but, in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both Houses, choose one of such persons so having an equal and the highest number of votes for Governor.

§ 5. The Governor shall be Commander in Chief of the militia, the army, and navy of this State.

§ 6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

§ 7. He shall see that the laws are faithfully executed.

§ 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

§ 9. He may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened.

§ 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

§ 11. In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

§ 12. No person shall, while holding any office under the United States, or this State, exercise the office of Governor, except as hereinafter expressly provided.

§ 14. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially and shall be called "The Great Seal of the State of California."

§ 15. All grants and commissions shall be in the name and by the authority of The People of the State of California, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

§ 16. A Lieutenant Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office, and his qualifications of

§ 5. The Governor shall be Commander-in-Chief of the militia, the army and navy of this State.

§ 6. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.

§ 7. He shall see that the laws are faithfully executed.

§ 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

§ 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

§ 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

§ 11. In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

§ 12. No person shall, while holding any office under the United States or this State, exercise the office of Governor except as hereinafter expressly provided.

§ 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

§ 14. All grants and commissions shall be in the name and by the authority of the People of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

§ 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of

eligibility, shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease.

§ 17. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander in Chief of all the military force of the State.

§ 18. A Secretary of State, a Controller, a Treasurer, an Attorney General, and a Surveyor General shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant Governor, and whose term of office shall be the same as the Governor.

[Amended 1862.]

§ 19. The Secretary of State shall keep a fair record of the official acts of the Legislative and Executive Departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law; and in order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said Article V by the Legislature of eighteen hundred and sixty-one, no officer shall be superseded or suspended thereby, until the election and qualification of the several officers provided for in said amendments.

[Amended 1862. Original provided for appointment of Secretary of State by the Governor.]

§ 20. The Controller, Treasurer, Attorney General, and Surveyor General, shall be chosen by joint vote of the two Houses of the Legislature at their first session under this Constitution, and thereafter shall be elected at the

eligibility shall also be the same. He shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tempore of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

§ 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

§ 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant-Governor, and their terms of office shall be the same as that of the Governor.

§ 18. The Secretary of State shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

same time and places, and in the same manner, as the Governor and Lieutenant Governor.

§ 21. The Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, and Surveyor General, shall each, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive for his own use any fees for the performance of his official duties.

SCHEDULE.

§ 15. Until the Legislature shall otherwise direct, in accordance with the provisions of this Constitution, the salary of the Governor shall be ten thousand dollars per annum; and the salary of the Lieutenant Governor shall be double the pay of a State Senator; and the pay of members of the Legislature shall be sixteen dollars per diem while in attendance, and sixteen dollars for every twenty miles traveled by the usual route from their residences to the place of holding the session of the Legislature, and in returning therefrom. And the Legislature shall fix the salaries of all officers other than those elected by the people at the first election.

§ 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General shall, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly, to be allowed only during the session of the Legislature; the Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, three thousand dollars each per annum, such compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; *provided, however*, that the Legislature, after the expiration of the terms hereinbefore mentioned, may, by law, diminish the compensation of any or all of such officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. No salary shall be authorized by law for clerical service, in any office provided for in this article, exceeding sixteen hundred dollars per annum for each clerk employed. The Legislature may, in its discretion, abolish the office of Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

§ 20. The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States.

ARTICLE VI.

JUDICIAL DEPARTMENT.

§ 1. The judicial power of this State shall be vested in a Supreme Court, in District Courts, in County Courts, in Probate Courts, and in Justices of the Peace, and in such Recorders' and other inferior Courts as the Legislature may establish in any incorporated city or town. [1862.]

§ 2. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The presence of three Justices shall be necessary for the transaction of business, excepting such business as may be done at chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. [1862.]

ARTICLE VI.

JUDICIAL DEPARTMENT.

§ 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

§ 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment

§ 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at special elections to be provided by law, at which elections no officer other than judicial shall be elected, except a Superintendent of Public Instruction. The first election for Justices of the Supreme Court shall be held in the year eighteen hundred and sixty-three. The Justices shall hold their offices for the term of ten years from the first day of January next after their election, except those elected at the first election, who, at their first meeting, shall so classify themselves by lot that one Justice shall go out of office every two years. The Justice having the shortest term to serve shall be the Chief Justice. [1832.]

§ 4. The Supreme Court shall have appellate jurisdiction in all cases in equity ; also in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars ; also in all cases arising in the Probate Courts ; and also in all criminal cases amounting to felony, on

in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

§ 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large at the general State elections, at the times and places at which State officers are elected; and the term of office shall be twelve years, from and after the first Monday after the first day of January next succeeding their election; *provided*, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

§ 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in pro-

questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any District Court, or any County Court in the State, or before any Judge of said Courts. [1862.]

§ 6. The District Courts shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars; and also in all criminal cases not otherwise provided for. The District Courts and their Judges shall have power to issue writs of habeas corpus, on petition by or on behalf of any person held in actual custody, in their respective districts. [1862.]

§ 5. The State shall be divided, by the Legislature of eighteen hundred and sixty-three, into fourteen Judicial Districts, subject to such alteration, from time to time, by a two-thirds vote of all the members elected to both Houses, as the public good may require; in each of which there shall be a District Court, and for each of which a District Judge shall be elected by the qualified electors of the district at the special Judicial elections to be held as provided for the election of Justices of the Supreme Court, by section three of this Article. The District Judges shall hold their offices for the term of six years from the first day of January next after their election. The Legislature shall have no power to grant leave of absence to a Judicial officer; and any such officer who shall absent himself from the State for upwards of thirty consecutive days shall be deemed to have forfeited his office. [1862.]

§ 7. There shall be in each of the organized counties of the State a County Court, for each of which a County

ceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment, or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

§ 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage, and of all such special cases and proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. They shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; *provided*, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

§ 6. There shall be in each of the organized counties, or cities and counties of the State, a Superior Court, for each

Judge shall be elected by the qualified electors of the county, at the special judicial election to be held as provided for the election of Justices of the Supreme Court by section three of this Article. The County Judges shall hold their offices for the term of four years from the first day of January next after their election. Said Courts shall also have power to issue naturalization papers. In the City and County of San Francisco the Legislature may separate the office of Probate Judge from that of County Judge, and may provide for the election of a Probate Judge, who shall hold his office for the term of four years. [1862.]

§ 8. The County Court shall have original jurisdiction of actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, and of all such special cases and proceedings as are not otherwise provided for; and also such criminal jurisdiction as the Legislature may prescribe; they shall also have appellate jurisdiction in all cases arising in Courts held by Justices of the Peace and Recorders, and in such inferior Courts as may be established in pursuance of section one of this Article, in their respective counties. The County Judges shall also hold, in their several counties, Probate Court, and perform such duties as Probate Judges as may be prescribed by law. The County Courts and their Judges shall also have power to issue writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. [1862.]

of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that until otherwise ordered by the Legislature, only one Judge shall be elected for the Counties of Yuba and Sutter, and that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court, elected in the City and County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

§ 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

§ 9. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and fix by law their powers, duties, and responsibilities; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record. The Supreme Court, the District Courts, County Courts, the Probate Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record. [1862.]

§ 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do. But a cause in a Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the Court, and sworn to try the cause.

§ 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two-thirds of the members of the Senate and two-thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; *provided*, that no such reduction shall affect any Judge who has been elected.

§ 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both Houses of the Legislature, adopted by a two-thirds vote of each House. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, nor unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

§ 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of the liens nor

§ 12. The times and places of holding the terms of the several Courts of record shall be provided for by law. [1862.]

§ 10. The Legislature shall fix by law the jurisdiction of any Recorder's or other inferior municipal Court which may be established in pursuance of section one of this Article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof. [1862.]

§ 11. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be *ex officio* Clerks of the Courts of record in and for their respective counties. The Legislature may also provide for the appointment by the several District Courts of one or more Commissioners in the several counties of their respective districts, with authority to perform Chamber business of the Judges of the District Courts and County Courts, and also to take depositions, and to perform such other business connected with the administration of justice as may be prescribed by law. [1862.]

§ 13. No judicial officer, except Justices of the Peace, Recorders, and Commissioners shall receive to his own use any fees or perquisites of office. [1862.]

§ 14. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient; and all opinions shall be free for publication by any person. [1862.]

§ 15. The Justices of the Supreme Court, District Judges, and County Judges, shall severally, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished, during the term for which they shall have been elected; *provided*, that County Judges shall be paid out of the County Treasury of their respective counties. [1862.]

the value of the property amounts to three hundred dollars.

§ 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

§ 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

§ 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, and shall fix by law his duties and compensation, which compensation shall not be increased or diminished during the term for which he shall have been elected. The County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

§ 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

§ 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

§ 17. The Justices of the Supreme Court and Judges of the Superior Court shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the Justices of the Supreme Court shall be paid by the State. One-half of the salary of each Superior Court Judge shall be paid by the State; the other half thereof shall be paid by the county for which he is elected. During the term of the

§ 16. The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected. . [1862.]

§ 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law. [1862.]

§ 18. The style of all process shall be: "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority. [1862.]

ARTICLE V.

§ 13. The Governor shall have the power to grant reprieves and pardons after conviction, for all offenses,

first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court Judges shall receive an annual salary of three thousand dollars each, payable monthly, except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, which shall receive four thousand dollars each.

§ 18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

§ 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

§ 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

§ 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

§ 22. No Judge of a Court of record shall practice law in any Court of this State during his continuance in office.

§ 23. No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State.

§ 24. No Judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless he shall take and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his Court remains undecided that has been submitted for decision for the period of ninety days.

ARTICLE VII.

PARDONING POWER.

§ 1. The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after

except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the pardon or reprieve.

ARTICLE VII.

MILITIA.

§ 1. The Legislature shall provide by law for organizing and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States.

§ 2. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor.

§ 3. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.

ARTICLE IX.

EDUCATION.

§ 2. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and

conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, the date of the pardon or reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of felony, unless upon the written recommendation of a majority of the Judges of the Supreme Court.

ARTICLE VIII.

MILITIA.

§ 1. The Legislature shall provide, by law, for organizing and disciplining the militia, in such manner as it may deem expedient, not incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.

§ 2. All military organizations provided for by this Constitution, or any law of this State, and receiving State support, shall, while under arms either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California.

ARTICLE IX.

EDUCATION.

§ 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

the five hundred thousand acres of land granted to the new States, under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual Fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

§ 1. A Superintendent of Public Instruction shall, at the special election for judicial officers to be held in the year eighteen hundred and sixty-three, and every four years thereafter, at such special elections, be elected by the qualified voters of the State, and shall enter upon the duties of his office on the first day of December next after his election.

[Amended 1862. Original provided for term of three years and election at the general election.]

§ 3. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public Fund during such neglect.

§ 2. A Superintendent of Public Instruction shall, at each gubernatorial election after the adoption of this Constitution, be elected by the qualified electors of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday after the first day of January next succeeding his election.

§ 3. A Superintendent of Schools for each county shall be elected by the qualified electors thereof at each gubernatorial election; *provided*, that the Legislature may authorize two or more counties to unite and elect one Superintendent for the counties so uniting.

§ 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or may have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

§ 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

§ 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools.

§ 4. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent Fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

§ 7. The Governor, Superintendent of Public Instruction, and the Principals of the State Normal Schools, shall constitute the State Board of Education, and shall compile, or cause to be compiled, and adopt a uniform series of text-books for use in the common schools throughout the State. The State Board may cause such text-books, when adopted, to be printed and published by the Superintendent of State Printing, at the State Printing Office; and when so printed and published, to be distributed and sold at the cost price of printing, publishing, and distributing the same. The text-books, so adopted, shall continue in use not less than four years; and said State Board shall perform such other duties as may be prescribed by law. The Legislature shall provide for a Board of Education in each county in the State. The County Superintendents and the County Boards of Education shall have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions. [Ratification declared Feb. 12, 1885.]

§ 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

§ 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic Act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several Acts amendatory thereof), subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs; *provided*, that all the moneys derived from the sale of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two (and the several Acts amendatory thereof), shall be invested as provided by said Acts of Congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one College of Agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of

learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said Acts of Congress; and the Legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. No person shall be debarred admission to any of the collegiate departments of the University on account of sex.

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

§ 1. There shall be a State Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy, occurring before the expiration of a term, shall hold office only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

§ 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

§ 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the Prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty. All other officers and employes of the Prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

§ 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

ARTICLE XI.

§ 4. The Legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the State.

§ 5. The Legislature shall have power to provide for the election of a Board of Supervisors in each county, and these Supervisors shall jointly and individually perform such duties as may be prescribed by law.

§ 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

§ 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

ARTICLE XI.

CITIES, COUNTIES, AND TOWNS.

§ 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

§ 2. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

§ 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.

§ 4. The Legislature shall establish a system of county governments which shall be uniform throughout the State; and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and, whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.

§ 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, town-

§ 9. Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.

ship, and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession.

§ 6. Corporations for municipal purposes shall not be created by special laws; but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by general laws.

§ 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or Houses of Legislation — one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for the term of two years. Any vacancy occurring in the office of Supervisor, in either Board, shall be filled by the Mayor or other chief executive officer.

§ 8. Any city containing a population of more than three thousand five hundred inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen Freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose

a charter for such city, which shall be signed, in duplicate, by the members of such Board, or a majority of them, and returned, one copy to the Mayor thereof, or other chief executive officer of such city, and the other to the Recorder of the county. Such proposed charter shall then be published in two daily newspapers of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; *provided*, that in cities containing a population of not more than ten thousand inhabitants such proposed charter shall be published in one such daily newspaper; and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall, after the approval of such charter by the Legislature, be made, in duplicate, and deposited, one in the office of the Secretary of State, and the other, after being recorded in said Recorder's office, shall be deposited in the archives of the city, and thereafter all Courts shall take judicial notice of said charter. The charter, so ratified, may be amended at intervals of not less than two years by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election, held at least forty days after the publication of such proposals for twenty days in a daily newspaper of general circulation in such city, and ratified by at least three fifths of the qualified electors voting thereat, and approved by the Legislature, as herein provided for the approval of the charter. In submitting any such charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. [Ratification declared Dec. 30, 1892.]

§ 9. The compensation of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

§ 10. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

§ 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

§ 12. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

§ 13. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with, any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

§ 14. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, appoint such officers.

§ 15. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

§ 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the Treasurer, or other legal depository, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

§ 17. The making of profit out of county, city, town, or other public money, or using the same for any purpose

ARTICLE IV.

§ 37. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

§ 18. No county, city, town, township, Board of Education, or school district shall incur any indebtedness or liability, in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year without the assent of two thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof on or before maturity, which shall not exceed forty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void. [Ratification declared Dec. 30, 1892.]

§ 19. In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose, under and by authority of the laws of this State, shall, under the direction of the Superintendent of Streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof. [Ratification declared Feb. 12, 1885.]

ARTICLE IV.

§ 31. Corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes. All general laws and special Acts passed pursuant to this section may be altered from time to time, or repealed.

§ 32. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

§ 36. Each stockholder of a corporation or joint stock association shall be individually and personally liable for his proportion of all its debts and liabilities.

§ 33. The term corporations, as used in this Article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all Courts, in like cases as natural persons.

§ 34. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed, under general laws, for the deposit of gold and silver; but no such associations shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

§ 35. The Legislature of this State shall prohibit by law any person or persons, association, company, or corporation from exercising the privileges of banking or creating paper to circulate as money.

ARTICLE XII.

CORPORATIONS.

§ 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

§ 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

§ 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation, or joint-stock association, during the term of office of such director or trustee.

§ 4. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued, in all Courts, in like cases as natural persons.

§ 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States.

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§ 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

§ 7. The Legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

§ 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State.

§ 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

§ 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

§ 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

§ 12. In all elections for directors or managers of corporations every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and

give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, except that members of co-operative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

§ 13. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation.

§ 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

§ 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.

§ 16. A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.

§ 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each the

other's passengers, tonnage, and cars, without delay or discrimination.

§ 18. No president, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

§ 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office.

§ 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights.

§ 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

§ 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which

one Railroad Commissioner shall be elected by the qualified electors thereof at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, commencing on the first Monday after the first day of January next succeeding their election. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpoenas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other

ARTICLE XI.

§ 13. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law; but Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the

facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The Legislature shall have power, by a two-thirds vote of all the members elected to each House, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever, from any cause, a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

§ 23. Until the Legislature shall district the State, the following shall be the railroad districts: The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the Counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

§ 24. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

ARTICLE XIII.

REVENUE AND TAXATION.

§ 1. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks,

district, county, or town in which the property taxed for
State, county, or town purposes is situated.

dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership: *provided*, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State.

§ 2. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

§ 3. Every tract of land containing more than six hundred and forty acres, and which has been sectionized by the United States Government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The Legislature shall provide by law for the assessment, in small tracts, of all lands not sectionized by the United States Government.

§ 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof; *provided*, that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

§ 5. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned,

or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

§ 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

§ 7. The Legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

§ 8. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian, on the first Monday of March.

§ 9. A State Board of Equalization, consisting of one member from each Congressional District in this State, as the same existed in eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and eighty six, and at each gubernatorial election thereafter, whose term of office shall be for four years, whose duty it shall be to equalize the valuation of the taxable property in the several counties of the State for the purposes of taxation. The Controller of State shall be *ex officio* a member of the Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe as to the county assessments, and under such rules of notice as the State Board may prescribe as to the action of the State Board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; *provided*, that no Board of Equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present State Board of Equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The Legislature shall have power to redistrict the State into four districts, as nearly equal in population as practicable, and to provide for the election of members of said Board of Equalization. [Ratification declared Feb. 12, 1885.]

§ 10. All property, except as hereinafter in this section provided, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law. The franchise, road-way, road-bed, rails and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization, at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, town, townships, and districts.

§ 11. Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

§ 12. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars on every male inhabitant of this State, over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

§ 13. The Legislature shall pass all laws necessary to carry out the provisions of this article.

ARTICLE XIV.

WATER AND WATER RIGHTS.

§ 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; *provided*, that the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed, annually, by the Board of Supervisors, or city and county, or City or Town Council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water-rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe. Any person, company, or corporation collecting water-

James W. Smith
John W. Smith
John W. Smith

ARTICLE VIII.

STATE DEBTS.

§ 1. The Legislature shall not in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate, with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and dis-

rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and water-works of such person, company, or corporation to the city and county, or city or town where the same are collected, for the public use.

§ 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

ARTICLE XV.

HARBOR FRONTAGES, ETC.

§ 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

§ 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

§ 3. All tidelands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

ARTICLE XVI.

STATE INDEBTEDNESS.

§ 1. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of

charge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each Judicial District, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people.

SCHEDULE.

§ 16. The limitation of the powers of the Legislature contained in Article VIII of this Constitution shall not extend to the first Legislature elected under the same, which is hereby authorized to negotiate for such amount as may be necessary to pay the expenses of the State Government.

ARTICLE XI.

§ 15. The Legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

ARTICLE X.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

§ 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members

such debt or liability within twenty years of the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people. The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

ARTICLE XVII.

LAND, AND HOMESTEAD EXEMPTION.

§ 1. The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families.

§ 2. The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

§ 3. Lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

ARTICLE XVIII.

AMENDING AND REVISING THE CONSTITUTION.

§ 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two-thirds of all the members elected to each of the two

elected to each of the two Houses, such proposed amendment or amendments shall be entered on their Journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become part of the Constitution.

§ 2. And if at any time two-thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not less than that of both branches of the Legislature.* The Constitution that may have been agreed upon and adopted by such Convention shall be submitted to the people, at a special election to be provided for by law, for their ratification or rejection. Each voter shall express his opinion by depositing in the ballot box a ticket, whereon shall be written or printed the words "For the New Constitution," or "Against the New Constitution." The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the votes so certified to him. If, by such examination, it be ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California.

[Words after the * were added by amendment of 1856.]

Houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon; and it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of this Constitution.

§ 2. Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at such election on the proposition for a Convention shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. The Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election at such place as the Legislature may direct. At a special election to be provided for by law, the Constitution that may be agreed upon by such Convention shall be submitted to the people for their ratification or rejection, in such manner as the Convention may determine. The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution, as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

ARTICLE XIX.

CHINESE.

§ 1. The Legislature shall prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State, upon failure or refusal to comply with such conditions; *provided*, that nothing contained in this section shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

§ 2. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

§ 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.

§ 4. The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is forever prohibited in this State, and all contracts for coolie labor shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation.

ARTICLE XI.

MISCELLANEOUS PROVISIONS.

§ 1. The first session of the Legislature shall be held at the Pueblo de San José, which place shall be the permanent seat of government until removed by law; *provided*, however, that two-thirds of all the members elected to each House of the Legislature shall concur in the passage of such law.

§ 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit or to enjoy the right of suffrage under this Constitution.

§ 3. Members of the Legislature and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

§ 6. All officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

§ 8. The fiscal year shall commence on the first day of July.

§ 11. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

§ 12. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

ARTICLE XX.

MISCELLANEOUS SUBJECTS.

§ 1. The City of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each House, may provide, submitting the question of change to the people.

§ 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

§ 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

§ 4. All officers or Commissioners whose election or appointment is not provided for by this Constitution, and all officers or Commissioners whose offices or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

§ 5. The fiscal year shall commence on the first day of July.

§ 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

§ 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

§ 14. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

§ 16. No perpetuities shall be allowed except for eleemosynary purposes.

§ 17. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

§ 18. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

§ 19. Absence from this State on business of the State or of the United States shall not affect the question of residence of any person.

SCHEDULE.

§ 4. The provisions of this Constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen by the people at the first election, or by the Legislature at its first session.

ARTICLE XI.

§ 20. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

§ 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

§ 9. No perpetuities shall be allowed except for eleemosynary purposes.

§ 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

§ 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

§ 12. Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person.

§ 13. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

§ 14. The Legislature shall provide, by law, for the maintenance and efficiency of a State Board of Health.

§ 15. Mechanics, material men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and

§ 7. When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office not fixed by this Constitution ever exceed four years.

SCHEDULE.

§ 13. All officers of this State, other than members of the Legislature, shall be installed into office on the fifteenth day of December next, or as soon thereafter as practicable.

ARTICLE XII.

BOUNDARY.

§ 1. The boundary of the State of California shall be as follows:

Commencing at the point of intersection of forty-second degree of north latitude with the one hundred twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line in a southeasterly direction to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence, running west and along said boundary line, to the Pacific Ocean, and ex-

the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

§ 16. When the term of any officer or Commissioner is not provided for in this Constitution, the term of such officer or Commissioner may be declared by law; and, if not so declared, such officer or Commissioner shall hold his position as such officer or Commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

§ 17. Eight hours shall constitute a legal day's work on all public work.

§ 18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

§ 19. Nothing in this Constitution shall prevent the Legislature from providing, by law, for the payment of the expenses of the Convention framing this Constitution, including the per diem of the Delegates for the full term thereof.

§ 20. Elections of the officers provided for by this Constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even numbered years next before the expiration of their respective terms. The terms of such officers shall commence on the first Monday after the first day of January next following their election.

ARTICLE XXI.

BOUNDARY.

§ 1. The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a southeasterly direction, to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein

tending therein three English miles; thence, running in a northwesterly direction and following the direction of the Pacific Coast, to the forty-second degree of north latitude; thence, on the line of said forty-second degree of north latitude, to the place of beginning. Also, all the islands, harbors, and bays along and adjacent to the coast.

SCHEDULE.

§ 3. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no office shall be superseded thereby nor the laws relative to the duties of the several officers be changed until the entering into office of the new officers to be appointed under this Constitution.

§ 1. All rights, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this Constitution and not inconsistent therewith, until altered or repealed by the Legislature, shall continue as if the same had not been adopted.

ARTICLE VI.

§ 19. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said Article VI, by the Legislature of eight-

three English miles; thence running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast.

ARTICLE XXII.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

§ 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature.

§ 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution, to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality thereof, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

§ 3. All Courts now existing, save Justices' and Police Courts, are hereby abolished; and all records, books, papers, and proceedings from such Courts. as are abolished

een hundred and sixty-one, no officer shall be superseded thereby, nor shall the organization of the several Courts be changed thereby, until the election and qualification of the several officers provided for in said amendment.

[The whole of article six was amended in 1862.]

SCHEDULE.

§ 2. The Legislature shall provide for the removal of all causes which may be pending when this Constitution goes into effect to Courts created by the same.

§ 6. This Constitution shall be submitted to the people for their ratification or rejection at the general election to be held on Tuesday, the thirteenth day of November next. The Executive of the existing Government of California is hereby requested to issue a proclamation to the people, directing the Prefects of the several districts, or, in case of vacancy, the Sub-Prefects or Senior Judge of First Instance, to cause such election to be held on the day aforesaid in their respective districts. The election shall be conducted in the manner which was prescribed for the election of Delegates to this Convention, except that the Prefects, Sub-Prefects, or Senior Judge of First Instance ordering such election in each district shall have power to designate any additional number of places for opening the polls, and that in every place of holding the election a regular poll list shall be kept by the Judges and Inspectors of Election. It shall also be the duty of these Judges and Inspectors of Election, on the day aforesaid, to receive the votes of the electors qualified to vote at such election. Each voter shall express his opinion by depositing in the ballot box a ticket whereon shall be written or printed, "For the Constitution," or "Against the Constitution," or some such words as will distinctly convey the intention of the voter. These Judges and Inspectors shall also receive the votes for the several officers to be voted for at the said election, as herein provided. At the close of the election the Judges and Inspectors shall carefully count each ballot, and forthwith make duplicate returns thereof to the Prefect, Sub-Prefect, or Senior Judge of First Instance, as the case may be, of their respective districts; and said Prefect, Sub-Prefect, or Senior Judge of First Instance shall transmit one of the same, by the most safe and rapid conveyance, to the Secretary of State. Upon the receipt of said returns, or on the tenth day of December next, if the returns be not sooner received, it shall be the duty of a Board of Canvassers,

by this Constitution, shall be transferred on the first day of January, eighteen hundred and eighty, to the Courts provided for in this Constitution; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

§ 4. The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine, cause to be printed at the State Printing Office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the post-office address of each registered voter; *provided*, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of the State. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

§ 5. The Superintendent of Printing of the State of California shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "For the new Constitution." He shall likewise cause to be so printed and delivered to said Clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "Against the new Constitution." The Secretary of State is hereby authorized and required to furnish the Superintendent of State Printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

§ 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be

to consist of the Secretary of State, one of the Judges of the Superior Court, the Prefect, Judge of First Instance, and an Alcalde of the District of Monterey, or any three of the aforementioned officers, in the presence of all who shall choose to attend, to compare the votes given at said election, and to immediately publish an abstract of the same in one or more of the newspapers of California. And the Executive will also, immediately after ascertaining that the Constitution has been ratified by the people, make proclamation of the fact; and thenceforth this Constitution shall be ordained and established as the Constitution of California.

§ 5. Every citizen of California declared a legal voter by this Constitution, and every citizen of the United States a resident of this State on the day of election, shall be entitled to vote at the first general election under this Constitution, and on the question of the adoption thereof.

§ 7. If this Constitution shall be ratified by the people of California, the Executive of the existing Government is hereby requested, immediately after the same shall be ascertained, in the manner herein directed, to cause a fair copy thereof to be forwarded to the President of the United States, in order that he may lay it before the Congress of the United States.

delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable registers, poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; *provided*, that the duties in this and the preceding section imposed upon the Clerk of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of Voters for said city and county.

§ 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

§ 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the City and County of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from time to time until all the returns are received, or until the second Monday after said election, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

§ 9. The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If, by such examination and computation, it is as-

§ 8. At the general election aforesaid, viz: the thirteenth day of November next, there shall be elected a Governor, Lieutenant Governor, members of the Legislature, and also two members of Congress.

§ 9. If this Constitution shall be ratified by the people of California, the Legislature shall assemble at the seat of Government on the fifteenth day of December next; and in order to complete the organization of that body the Senate shall elect a President pro tempore, until the Lieutenant Governor shall be installed into office.

§ 10. On the organization of the Legislature, it shall be the duty of the Secretary of State to lay before each House a copy of the abstract made by the Board of Canvassers, and, if called for, the original returns of election, in order that each House may judge of the correctness of the report of said Board of Canvassers.

§ 11. The Legislature, at its first session, shall elect such officers as may be ordered by this Constitution to be elected by that body, and within four days after its organization, proceed to elect two Senators to the Congress of the United States. But no law passed by this Legislature shall take effect until signed by the Governor after his installation into office.

§ 12. The Senators and Representatives of the Congress of the United States elected by the Legislature and people of California, as herein directed, shall be furnished with certified copies of this Constitution, when ratified, which they shall lay before the Congress of the United States, requesting, in the name of the people of California, the admission of the State of California into the American Union.

certained that a majority of the whole number of votes cast at such election is in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the days hereinafter specified.

§ 10. In order that future elections in this State shall conform to the requirements of this Constitution, the terms of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as fixed by law or by this Constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen, after the adoption of this Constitution, shall be elected at the time and in the manner now provided by law. Judicial officers and the Superintendent of Public Instruction shall be elected at the time and in the manner that State officers are elected.

ARTICLE IX.

§ 39. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to Article IV by the Legislature of eighteen hundred and sixty-one, no officer shall be suspended or superseded thereby until the election and qualification of the several officers provided for in said amendments.

[New section in amendment of 1862.]

R. SEMPLE,
President, and Delegate from Benicia.

WM. G. MARCY, Secretary.

JOSEPH ARAM,
CH. T. BOTTS,
ELAM BROWN,
ELISHA O. CROSBY,
JOSE M. COVARUBIAS,
STEPHEN C. FOSTER,
PABLO DE LA GUERRA,
LEWIS DENT,
KIMBALL H. DIMMICK,
A. J. ELLIS,
JOSE ANTO CARRILLO,
WM. M. GWIN,
EDW. GILBERT,
HENRY HILL,
J. D. HOPPE,
JOSEPH HOBSON,
JULIAN HANKS,
H. W. HALLECK,
L. W. HASTINGS,
J. McHENRY HOLLINSWORTH,
JAS. McHALL JONES,
THOMAS O. LARKIN,
FRANCIS J. LIPPITT,
BENJ. S. LIPPINCOTT,

BENJ. F. MOORE,
RODMAN M. PRICE,
JNO. McDOUGALL,
MAN'L DOMINGUEZ,
MYRON NORTON,
PACIFICUS ORD,
MIGUEL D. PEDRORENA,
M. M. McCARVER,
ANTONIO MA. PICO,
JACINTO RODRIGUEZ,
HUGH REID,
J. A. SUTTER,
JACOB R. SNYDER,
WINFIELD SCOTT SHERWOOD,
WILLIAM E. SHANNON,
ABEL STEARNS,
P. SANSEVAINÉ,
WM. M. STEUART,
HENRY A. TEFFT,
M. G. VALLEJO,
THOS. L. VERMEULE,
J. P. WALKER,
O. M. WOZENCRAFT.

§ 11. All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation.

§ 12. This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers, the commencement of their terms of office, and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

J. P. HOGE,
President.

Attest: EDWIN F. SMITH, Secretary.

A. R. ANDREWS,
JAMES J. AYERS,
CLITUS BARBOUR,
EDWARD BARRY,
JAMES N. BARTON,
C. J. BEERSTECHER,
ISAAC S. BELCHER,
PETER BELL,
MARION BIGGS,
E. T. BLACKMER,
JOSEPH C. BROWN,
SAM'L. B. BURT,
JOSIAH BOUCHER,
JAMES CAPLES,
AUG. H. CHAPMAN,
J. M. CHARLES,
JOHN D. CONDON,
C. W. CROSS,
HAMLET DAVIS,
JAS. E. DEAN,
P. T. DOWLING,
LUKE D. DOYLE,
W. L. DUDLEY,
JONATHAN M. DUDLEY,
PRESLEY DUNLAP,
JOHN EAGON,
THOMAS H. ESTEY,
HENRY EDGERTON,
M. M. ESTEE,
EDWARD EVEY,
J. A. FILCHER,
SIMON J. FARRELL,
ABRAHAM CLARK FREEMAN,
JACOB RICHARD FREUD,
J. B. GARVEY,
B. B. GLASSCOCK,
JOSEPH C. GORMAN,
W. P. GRACE,
WILLIAM J. GRAVES,
V. A. GREGG,

JNO. S. HAGER,
JOHN B. HALL,
THOMAS HARRISON,
JOEL A. HARVEY,
T. D. HEISKELL,
CONRAD HEROLD,
D. W. HERRINGTON,
S. G. HILBORN,
J. R. W. HITCHCOCK,
J. E. HALE,
VOLNEY E. HOWARD,
SAM A. HOLMES,
W. J. HOWARD,
WM. PROCTOR HUGHEY,
W. F. HUESTIS,
G. W. HUNTER,
DANIEL INMAN,
GEORGE A. JOHNSON,
L. F. JONES,
PETER J. JOYCE,
J. M. KELLEY,
JAMES H. KEYES,
JOHN J. KENNY,
C. R. KLEINE,
T. H. LAINE,
HENRY LARKIN,
R. M. LAMPSON,
R. LAVIGNE,
H. M. LA RUE,
DAVID LEWIS,
J. F. LINDOW,
JNO. MANSFIELD,
EDWARD MARTIN,
J. WEST MARTIN,
RUSH MCCOMAS,
JOHN G. MCCALLUM,
THOMAS MCCONNELL,
JOHN MCCOY,
THOMAS B. MCFARLAND,
HIRAM MILLS,

WM. S. MOFFATT,
JOHN FLEMING McNUTT,
W. W. MORELAND,
L. D. MORSE,
JAMES E. MURPHY,
EDMUND NASON,
THORWALD KLAUDIUS NEL-
SON,
HENRY NEUNABER,
CHS. C. O'DONNELL,
GEORGE OHLEYER,
JAMES O'SULLIVAN,
JAMES MARTIN PORTER,
WILLIAM H. PROUTY,
M. R. C. PULLIAM,
CHAS. F. REED,
PATRICK REDDY,
JNO. M. RHODES,
JAS. S. REYNOLDS,
HORACE C. ROLFE,
CHAS. S. RINGGOLD,
JAMES McM. SHAFER,
GEO. W. SCHELL,
J. SCHOMP,
RUFUS SHOEMAKER,
E. O. SMITH,
BENJ. SHURTLEFF,
GEO. VENABLE SMITH,
H. W. SMITH,
JOHN C. STEDMAN,

E. P. SOULE,
D. C. STEVENSON,
GEO. STEELE,
CHAS. V. STUART,
W. J. SWEASEY,
CHARLES SWENSON,
R. S. SWING,
D. S. TERRY,
S. B. THOMPSON,
F. O. TOWNSEND,
W. J. TINNIN,
DANIEL TUTTLE,
P. B. TULLY,
H. K. TURNER,
A. P. VACQUEREL,
WALTER VAN DYKE,
WM. VAN VOORHIES,
HUGH WALKER,
JNO. WALKER,
BYRON WATERS,
JOSEPH R. WELLER,
J. V. WEBSTER,
JOHN P. WEST,
PATRICK M. WELLIN,
JOHN T. WICKES,
WM. F. WHITE,
H. C. WILSON,
JOS. W. WINANS,
N. G. WYATT.



Constitution

OF THE

STATE OF CALIFORNIA

ADOPTED IN CONVENTION, AT SACRAMENTO, MARCH
3RD, A. D. 1879; RATIFIED BY A VOTE
OF THE PEOPLE ON WEDNESDAY.
MAY 7TH, 1879.

State constitutions.—A State constitution is an instrument of restriction and limitation upon powers already plenary, so far as it affects the functions of the Government and the objects of legislation.¹ It restrains only so far as the restrictions are either by express terms or by necessary implication;² whereas, the Federal Constitution is a delegation by the States to Government of only specific, enumerated powers, withholding all not named; while, on the contrary, a State constitution contains a grant from the people of all power not expressly withheld.³ The legislative department, unlike the Congress of the United States, represents the independent sovereignty of the people, controlled only by such restrictions as are imposed by the organic law.⁴ Whatever is not expressly denied to legislative power is possessed by it.⁵ Sovereignty expresses the supreme political authority of an independent State or nation,⁶ and an express enumeration of legislative powers is not an exclusion of others not named, unless accompanied by negative terms.⁷ A limitation as to form or manner excludes every other form or manner,⁸ and affirmative expressions introducing a new rule imply a negative of all not within their purview.⁹ Where the declaration of rights and the constitution dif-

fer, the latter is the adopted limitation of the general principles.¹⁰ An ordinance appended to a constitution is a part of the fundamental law.¹¹ The fundamental conditions attached to the act of admission of a State form a part of the organic law.¹²

1 *State v. Reid*, 1 Ala. 612; *Dorman v. State*, 34 Ala. 216; *Ex parte Dorsey*, 7 Port. 293; *Ex parte Pickett*, 24 Ala. 91; *Stein v. Mayor*, *Ibid.* 591; *Alabama & Fla. R. R. Co. v. Burkett*, 42 Ala. 83; *State v. Ashley*, 1 Ark. 513; *Starr v. Pease*, 8 Conn. 547; *Pratt v. Allen*, 13 Conn. 123; *Opin. of Judges*, 30 *Ibid.* 596; *State v. Lancaster Co.* 4 Neb. 540; *Hallenbeck v. Hahn*, 2 Neb. 394; *People v. Draper*, 15 N. Y. 549; *People v. Flagg*, 46 *Ibid.* 401; *Monongahela Nav. Co. v. Coons*, 6 Watts & S. 117.

2 *Bourland v. Hildreth*, 26 Cal. 183; *Smith v. Judge Twelfth District Court*, 17 Cal. 547; *People v. Rogers*, 13 Cal. 159; *People v. Coleman*, 4 Cal. 46; *Hobart v. Supervisors of Butte*, 17 Cal. 30; *People v. Bigler*, 5 Cal. 23; *People v. Seymour*, 16 Cal. 332; *Hagar v. Yolo Co.* 47 Cal. 223; *Comm. v. Hartman*, 17 Pa. St. 119; *Sharpless v. Mayor &c.* 21 *Ibid.* 160; *Weister v. Hade*, 52 *Ibid.* 474.

3 *Dorman v. State*, 34 Ala. 216; *Ex parte Pickett*, 24 Ala. 91; *Stein v. Mayor &c.* *Ibid.* 591; *State v. Ashley*, 1 Ark. 513; *Hallenbeck v. Hahn*, 2 Neb. 394; *Comm. v. Hartman*, 17 Pa. St. 119; *Sharpless v. Mayor &c.* 21 *Ibid.* 160; *Weister v. Hade*, 52 *Ibid.* 474.

4 *Dorman v. State*, 34 Ala. 216; *Ex parte Dorsey*, 7 Port. 293; *Beals v. Amador Co.* 35 Cal. 630.

5 *Page v. Allen*, 58 Pa. St. 338.

6 *Moore v. Sinaw and Fremont v. Flower*, 17 Cal. 199.

7 *Ex parte McCarthy*, 29 Cal. 396.

8 *District T. Co. v. Dubuque*, 7 Clarke, (Iowa) 262.

9 *District T. Co. v. Dubuque*, 7 Clarke, (Iowa) 262.

10 *Baltimore v. State*, 15 Md. 376.

11 *Stewart v. Crosby*, 15 Tex. 546.

12 *Buttle v. People*, 2 Neb. 225.

Interpretation and construction.—State constitutions are to be interpreted with reference to previous State legislation,¹ and when provisions are borrowed from constitutions of other States, which provisions had already received judicial interpretation, it is presumed they were adopted in view of such interpretation.² Judicial interpretations made near the time of their adoption is strong evidence that the people understood and intended them to be as interpreted.³ The solemn, deliberate, and long-settled precedents of courts and the practice and acquiescence of governments and people should possess controlling weight.⁴ So, every reason is in favor of a steady adherence to judicial decisions on doubtful questions.⁵ Constitutional provisions are to have a reasonable con-

struction.⁶ The object of all rules of construction is to discover the true intent of the instrument, to be derived from the subject-matter and language in common with known political truths,⁸ the real intent to prevail over the literal sense of the terms,⁹ which are not to be taken in a technical sense,¹⁰ and the whole to be taken together,¹¹ and considered in ascertaining construction of terms in particular clauses.¹² Constitutions, like statutes, must be construed, if possible, to give some force and effect to each of their provisions,¹³ and not one portion in antagonism with another,¹⁴ but such a construction as will leave all the provisions unimpaired.¹⁵ And when compelled to declare that full and detailed effect cannot be given to a certain part, courts will not declare that no effect can be given to any part, but will give the provision all the effect they can.¹⁶ They are to be liberally construed, while the Federal Constitution is to be strictly construed.¹⁷ They are to be liberally construed in favor of citizens as to life, liberty, and property.¹⁸ They are to be studied in the light of ordinary language, the circumstances attending their foundation, and the constructions placed on them by the people whose bond they are.¹⁹ The debates in convention cannot properly be referred to in expounding the constitution.²⁰ If a provision differs from the declaration of rights, the former is to be taken in construing the intent.²¹ A constitution, unless otherwise clearly expressed, can operate only prospectively.²² Negative and prohibitory provisions are self-executing,²³ and restrictions not merely prospective operate *in present* without legislative action.²⁴ A provision designed to remove an existing mischief should never be construed as dependent upon legislative will for its efficacy or operation.²⁵

1 *Baltimore v. State*, 15 Md. 376.

2 *People v. Coleman*, 4 Cal. 46; *Attorney-General v. Brunst*, 3 Wis. 787.

3 *Knowles v. Yeates*, 31 Cal. 82.

4 *Ferris v. Coover*, 11 Cal. 178; *State v. Sorrells*, 15 Ark. 664.

5 *Maddox v. Graham*, 2 Met. (Ky.) 56.

6 *People v. Mahoney*, 13 Mich. 481.

7 *District T. & Co. v. Dubuque*, 7 Clarke, 262.

8 *Ex parte Allis*, 12 Ark. 101.

9 *District T. & Co. v. Dubuque*, 7 Clarke, 262.

10 *Page v. State*, 58 Pa. St. 338; *Wilkinson v. Leland*, 2 Peters, 661.

11 *District T. & Co. v. Dubuque*, 7 Clarke, 262.

- 12 *Manly v. State*, 7 Md. 135.
- 13 *French v. Teschemacher*, 24 Cal. 539; *Hagenbuck v. Reed*, 3 Neb. 24; *People v. Gosper*, 3 Neb. 310; *Helmer v. McCounel*, 8 Neb. 28; *Decklar v. Frankenberger*, 30 La. An. 410.
- 14 *Brooks v. Mobile*, 31 Ala. 227; *McCann v. McLennan*, 2 Neb. 288.
- 15 *State v. Scott*, 9 Ark. 270.
- 16 *Cummings v. Spaunhorst*, 5 Mo. Ct. App. 21.
- 17 *Walcott v. Wigton*, 7 Ind. 44.
- 18 *Dorman v. State*, 34 Ala. 216; *State v. Ashley*, 1 Ark. 513; *State v. Scott*, 9 Ark. 270.
- 19 *Cronise v. Cronise*, 54 Pa. St. 255; *Padelford v. Mayor &c.* 14 Ga. 438.
- 20 *Taylor v. Taylor*, 10 Minn. 107.
- 21 *Baltimore v. State*, 15 Md. 376.
- 22 *Chicago v. Rumsey*, 87 Ill. 349; *State v. Barbee*, 3 Ind. 258; *Orr v. Rhine*, 45 Tex. 345.
- 23 *Law v. People*, 87 Ill. 385.
- 24 *People v. McRoberts*, 62 Ill. 38.
- 25 *People v. Rumsey*, 64 Ill. 44; *Chance v. Marion Co.* 64 Ill. 66; *O'Connor v. Leddy*, 64 Ill. 299.

Construction of terms.—Words are to be taken in their common acceptance where not used in a technical sense.¹ The plain meaning of words employed cannot be changed because the literal interpretation may be inconsistent with other parts of the instrument in relation to other subjects.² Resort must be had to the natural signification of the words.³ If a literal interpretation involves any absurdity, contradiction, injustice, or extreme hardship, courts may deviate from the received sense and literal meaning of the words, but this must be done with great caution,⁴ and a strained construction or astute interpretation is not to be given to relieve against local or individual hardships.⁵ In case of uncertainty of language, broad considerations of expediency are not to be overlooked.⁶ "Necessary" does not always mean "indispensable," but may be construed to signify a grant of discretion.⁷

- 1 *State v. Scott*, 9 Ark. 270; *Manly v. State*, 7 Md. 135.
- 2 *Cautwell v. Owens*, 14 Md. 215; *Law v. People*, 87 Ill. 385.
- 3 *Springfield v. Edwards*, 84 Ill. 626.
- 4 *Taylor v. Taylor*, 10 Minn. 107.
- 5 *Law v. People*, 87 Ill. 385.
- 6 *Baltimore v. State*, 15 Md. 376.
- 7 *Cotton v. Leon Co.* 6 Fla. 610.

PREAMBLE AND DECLARATION OF RIGHTS.

PREAMBLE.

We, the people of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

1. Inalienable rights.
2. Political power.
3. Relation to the American Union.
4. Religious freedom.
5. *Habeas corpus*.
6. Right to bail—rights of witnesses.
7. Trial by jury.
8. Offenses, how prosecuted.
9. Liberty of speech and freedom of the press—trials for libel.
10. Popular assemblies.
11. Uniformity of laws.
12. Military power.
13. Personal and property rights.
14. Eminent domain.
15. Imprisonment in civil cases.
16. Laws prohibited. Bills of attainder, *ex post facto*, etc.
17. Rights of foreign residents.
18. Slavery prohibited.
19. Searches and seizures, restriction on.
20. Treason defined.
21. Privileges and immunities of citizens.
22. Provisions of Constitution construed.
23. Rights retained by the people.
24. Property qualification not required.

§ 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

See Ala. I, 1; Ark. II, 2; Colo. II, 3; Conn. I, 1; Fla. I, 1; Ill. II, 1; Ind. I, 1; Iowa, I, 1; Kans. Bill Rts. 1; Ky. Bill Rts. 1; La. I, 1; Me. I, 1; Mass. Pt. I, st. 1; Mo. II, 4; Neb. I, 1, 2; Nev. I, 1; N. H. I, 1, 2; N. J. I, 1; N. C. I, 1; Ohio, I, 1; Or. I, 1; Pa. I, 1; S. C. I, 1; Vt. I, 1; Va. I, 1; Wis. I, 1; W. Va. III, 1.

Construction.—The term “all men are by nature free and independent” did not abolish slavery in New Jersey, or affect the laws existing on that subject.¹ No person can be deprived of the right to manage his own affairs or his personal liberty without the intervention of a jury;² and any grant to another to manage and improve one's property is an infringement of the right of “acquiring, possessing, and protecting property;”³ but destruction of property in abating a public nuisance is justifiable;⁴ so, the legislature may compel local improvements, and impose local assessments to pay for the same.⁵ Choses in action, State bonds, and bills of exchange are property.⁶ While every one is to be secure in the exercise and enjoyment of all these rights, he may be restrained or prohibited from exercising them in any manner which will interfere with a reasonable exercise of the same rights by other persons.⁷ An act creating a lien on lumber, etc., is no abridgment of the right.⁸ The legislative power cannot reach the life, liberty, or property of an individual, except when convicted of crime, or when the sacrifice of his property is demanded by a just regard for public welfare.⁹

1 *State v. Post*, Spenc. 368; 1 Zab. 699.

2 *In re Dey*, 1 Stockt. 181.

3 *Coster v. Tide Water Co.* 3 C. E. Green, 54, 518.

4 *Dunbar v. San Francisco*, 1 Cal. 355; *Correas v. San Francisco*, 1 Cal. 452; *Surocco v. Geary*, 3 Cal. 69; *Manhattan Co. v. Van Kenren*, 3 C. E. Green, 251.

5 *Hagar v. Yolo Co.* 47 Cal. 223.

6 *People v. Eddy*, 43 Cal. 338.

7 *Ex parte Smith & Keating*, 38 Cal. 704.

8 *Spofford v. True*, 33 Me. 283.

9 *A. & N. R. R. Co. v. Baty*, 6 Neb. 37.

§ 2. All political power is inherent in the people.¹ Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.²

1 Ala. I, 3; Ark. II, 1; Conn. I, 2; Fla. I, 2; Ind. I, 1; Iowa, 1, 2; Kans. Bill Rts. 2; Ky. XIII, 4; Me. I, 2; Nev. I, 2; N. J. I, 2; Ohio, I, 2; Or. I, 1; Pa. I, 2; Tenn. I, 1; Tex. I, 2.

2 Ark. II, 1; Fla. I, 2; Ind. I, 1; Ky. XIII, 4; Iowa, I, 2; Me. I, 2; Nev. I, 2; N. J. I, 2; Ohio, I, 2; Pa. I, 2; Tenn. I, 1.

And see Md. Dec. Rts. 4; Mo. II, 1, 2; N. C. I, 2; Or. I, 1; S. C. I, 3; Va. I, 2, 3; W. Va. III, 2, 3.

§ 3. The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

See Ala. I, 35; Fla. I, 3; Ga. I, 33; La. I, 3; Md. Dec. Rts. 2; Miss. I, 20; Mo. II, 3; Nev. I, 2; N. C. I, 4; S. C. I, 4; Tex. I, 1; Va. I, 2, 3; W. Va. I, 1.

§ 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State;¹ and no person shall be rendered incompetent to be a witness or juror² on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.³

¹ "Guaranteed"—Colo. II, 4; Ill. II, 3; "or juror"—Mo. II, 5; Or. I, 6; Colo. II, 4; N. Y. I, 3; Tenn. I, 6.

² Ind. I, 7; Neb. I, 4; Nev. I, 4; N. Y. I, 3; Ohio, I, 7.

³ Colo. II, 4; Conn. I, 3; Ga. I, 6; Ill. II, 3; Minn. I, 16; Mo. II, 5; Nev. I, 4; N. Y. I, 3.

And see Ala. I, 4; Ark. II, 25; Fla. I, 5; Iowa, I, 3; Kans. Bill Rts. 7; Ky. XIII, 5; Me. I, 3; Md. Bill Rts. 36; Mass. Pt. I, st. 2; Mich. IV, 39; Miss. I, 23; Neb. I, 4; N. H. Pt. I, 5; N. J. I, 3; N. C. I, 26; Or. I, 2; Pa. I, 3; R. I. I, 3; S. C. I, 9; Tenn. I, 3; Tex. I, 6; Vt. I, 3; Va. I, 18; W. Va. III, 15; Wis. I, 18.

Religion.—Legislation, the effect of which is to promote religion, or advance the interest of a particular sect, is not necessarily void under this provision.¹ Opinions on any subject, or holding any faith or views, is no ground for removal from the guardianship of minor children.² The testimony of a witness may be received, without respect to his religious sentiments.³ Christianity, with full liberty of conscience, is a part of the common law.⁴ The State may enact Sunday laws, and regulate the observance of the Sabbath.⁵

¹ *Ex parte Andrews*, 18 Cal. 678. *Contra*, *Ex parte Newman*, 9 Cal. 502.

² *Maxey v. Bell*, 41 Ga. 183.

³ *Fuller v. Fuller*, 17 Cal. 605.

4 *Vidal v. Girard*, 2 How. 198; *Lindenmuller v. People*, 33 Barb. 548; *Brown v. Hummel*, 6 Pa. St. 96; *Specht v. Comm.* 8 Ibid. 327; *Harvey v. Boies*, 1 Penn. & W. 12; *Zeisweiss v. James*, 63 Pa. St. 465; *Updegraph v. Comm.* 11 Serg. & R. 400; *Comm. v. Johnston*, 11 Leg. Int. 14; 22 Pa. St. 114.

5 *Hagar v. Yolo Co.* 47 Cal. 223; *Specht v. Comm.* 8 Pa. St. 322; *Omit v. Comm.* 21 Ibid. 426; *Johnston v. Comm.* 22 Ibid. 114; 11 Leg. Int. 14; *Comm. v. Wolf*, 3 Serg. & R. 48; *Comm. v. Leshar*, 17 Serg. & R. 180.

§ 5. The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.

U. S. I, 9 (2); Ala. I, 18; Ark. II, 11; Colo. II, 21; Fla. Dec. Rts. 6; Ill. II, 7; Ind. I, 27; Minn. I, 7; Mo. II, 26; Neb. I, 8; Nev. I, 5; N. Y. I, 4; W. Va. III, 4.

See Conn. I, 14; Del. I, 13; Ga. I, 13; Iowa, I, 13; Kans. Bill Rts. 8; Ky. XIII, 18; La. I, 7; Me. I, 10; Md. III, 55; Mass. IV, 7; Mich. IV, 44; Miss. I, 3; N. H. Pt. II, 91; N. J. I, 11; N. C. I, 21; Ohio, I, 8; Or. I, 24; Pa. I, 14; R. I. I, 9; S. C. I, 17; Tenn. I, 15; Tex. I, 12; Vt. Amend. XII; Va. V, 14; W. Va. III, 4; Wis. I, 8.

§ 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great.¹ Excessive bail shall not be required, nor excessive fines imposed,² nor shall cruel or unusual punishments be inflicted.³ Witnesses shall not be unreasonably detained,⁴ nor confined in any room where criminals are actually imprisoned.

1 Ala. I, 17; Ark. II, 8; Colo. II, 19; Conn. I, 14; Fla. Dec. Rts. 8; Ill. II, 7; Ind. I, 17; Kan. Bill Rts. 9; Mo. II, 24; Neb. I, 9; Nev. I, 7; Ohio, I, 9; Pa. I, 14; Tex. I, 11. And see Del. I, 12; Ind. I, 17; Ky. XIII, 18; La. I, 8; Me. I, 10; Miss. I, 8; R. I. I, 9; S. C. I, 15; Wis. I, 8.

2 U. S. Amend. VIII; Ala. I, 16; Ark. II, 9; Colo. II, 20; Conn. I, 13; Fla. Dec. Rts. 7; Ga. I, 16; Iowa, I, 17; Kan. Bill Rts. 9; Ky. XIII, 17; La. I, 8; Me. I, 9; Mich. VI, 31; Minn. I, 5; Mo. II, 25; N. J. I, 15; N. Y. I, 5; Neb. I, 9; Nev. I, 6; Ohio, I, 9; Or. I, 16; Pa. I, 13; R. I. I, 8; S. C. I, 16, 38; Tenn. I, 16; Tex. I, 13; W. Va. III, 5; Wis. I, 6. And see Del. I, 11; Ind. I, 16; Mass. Pt. I, 26; Md. Dec. Rts. 25; Miss. I, 8; N. H. Pt. I, 33; N. C. I, 14; Va. I, 11; Wis. I, 6.

3 Ark. II, 9; Colo. II, 17; Fla. Dec. Rts. 7; Mich. VI, 31; Minn. I, 5; N. Y. I, 5; N. C. I, 15; S. C. I, 38; Pa. I, 13; Tex. I, 13; W. Va. III, 5. And see Del. I, 11; Ga. I, 16; Iowa, I, 17; La. I, 8; Mass. Pt. I, 26; Md. Dec. Rts. 25; Miss. I, 8; Neb. I, 9; N. J. I, 15; N. C. I, 14; Or. I, 16; Tenn. I, 16; Va. I, 11.

4 Mich. VI, 31; N. Y. I, 5; S. C. I, 38.

Bail, unless for capital offenses.—A prisoner charged with a homicide may be admitted to bail even after indictment found, where the evidence shows that the offense is not capital.¹ This latter clause in this section has reference to the guilt of the prisoner, and not to the nature or degree of the offense.² In capital cases, where the proof is evident or the presumption great, admission to bail may be made a matter of discretion, or may be forbidden, but in all other cases it is a constitutional right.³ The constitution contemplates only those cases in which the party has not been already convicted.⁴ Where two successive juries have failed to agree, it is a circumstance strongly going to show that as to the guilt the proof was not evident or the presumption great.⁵ If the evidence is of less efficacy than would sustain a verdict convicting of murder in the first degree, bail should be allowed.⁶

1 Ex parte Croom, 19 Ala. 561; Comm. v. Lemley, 2 Pitts. 362.

2 Comm. v. Lemley, 2 Pitts. 362.

3 Ex parte Bryant, 34 Ala. 270; Ex parte Banks, 28 Ala. 89; Ex parte Croom, 19 Ala. 561; People v. Tinder, 19 Cal. 539; Ex parte White, 9 Ark. 222.

4 Ex parte Voll, 41 Cal. 29.

5 In re Alexander, 59 Mo. 596.

6 Comm. v. Keeper of Prison, 2 Ashm. 227; Ex parte Bryant, 34 Ala. 270; State v. Summons, 19 Ohio, 139; Ex parte Foster, 5 Tex. Ct. App. 647.

§ 7. The right of trial by jury shall be secured to all, and remain inviolate;¹ but in civil actions three-fourths² of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law.³ In civil actions, and cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.⁴

1 See Ala. I, 12; Ark. II, 7; Colo. II, 23; Conn. I, 21; Del. I, 4; Fla. Dec. Rts. 4; Ga. III, 13; Ill. II, 5; Ind. I, 20; Kans. Bill Rts. 5; Ky. XII, 8; Me. I, 20; Md. XV, 6; Mass. Pt. I, 15; Mich. VI, 27; Minn. I, 4;

Miss. I, 12; Mo. II, 28; Neb. I, 6; Nev. I, 3; N. H. Pt. I, 20; N. C. I, 19; N. Y. I, 2; N. J. I, 7; Ohio, I, 5; Or. I, 18; Pa. I, 6; R. I. I, 15; S. C. I, 11; Tenn. I, 6; Tex. I, 15; Vt. II, 31; Va. I, 13; W. Va. III, 13; Wis. I, 5.

2 Three-fourths rule—Nev. I, 3; Tex. V, 12.

3 Waiver in civil actions—Ark. II, 7; Colo. II, 23; Fla. Dec. Rts. 4; Mich. VI, 27; Minn. I, 4; Nev. I, 3; N. Y. I, 2; Vt. II, 31; Wis. I, 5.

4 Number of jurors—Mo. II, 28; Neb. I, 6; N. J. I, 7.

Trial by jury.—The right of trial by jury is secured by the constitution¹ to all common-law actions,² and applies only to cases in which issues of fact are joined;³ but a municipal corporation, being the creature of the legislature, cannot claim the constitutional right of trial by jury.⁴ "Shall remain inviolate" does not mean that there should be a jury in all cases;⁵ nor do they preclude a change of venue;⁶ nor do they apply to applications for appeals from inferior courts.⁷ So, the legislature may authorize the Supreme Court, on affirmance, to render judgment against sureties on a writ-of-error bond.⁸ Trial by jury extends only to prosecutions by indictment or information, and not to cases created by statute.⁹ So, an official in an office created by statute may be tried for an official default, etc., without the intervention of a jury.¹⁰ It does not apply to proceedings on a presentment or complaint before a justice of the peace,¹¹ nor to summary remedies given by statute,¹² as the summary conviction of rogues and vagabonds.¹³ It does not apply to cases of tax-payers,¹⁴ nor does it apply to proceedings for ascertaining the value of property taken for public use.¹⁵ A judge cannot determine outside the record that an offense has been committed;¹⁶ and the comments of a judge on the evidence, in effect an instruction to the jury, are in violation of the defendant's rights.¹⁷ It is a right which a party may waive in civil cases;¹⁸ but it cannot be waived by implication,¹⁹ and a waiver by consent of defendant in a criminal case is a nullity.²⁰ The legislature may require the jury fee to be paid in advance.²¹

1 *Edwards v. Elliott*, 7 Vroom, 449; *Emerick v. Harris*, 1 Binn. 424; *In re Pennsylvania Hall*, 5 Pa. St. 204; *Livingston v. Moore*, 7 Pet. 552.

2 *Grim v. Norris*, 19 Cal. 140.

3 *Kopplius v. State Cap. Comm'rs*, 18 Cal. 248.

4 *Borough of Dunmore's App.* 52 Pa. St. 374.

5 *Flint River S. Co. v. Foster*, 5 Ga. 194.

6 *Taylor v. Gardiner*, 11 R. I. 182.

7 *Weed's App.* 35 Conn. 455.

8 *Johnston v. Atwood*, 2 Stew. 225.

9 *Tims v. State*, 26 Ala. 165.

10 *Boring v. Williams*, 17 Ala. 510.

- 11 *Goddard v. State*, 12 Conn. 454.
- 12 *Flint River S. Co. v. Foster*, 7 Ga. 194.
- 13 *Byers v. Comm.* 42 Pa. St. 89. And see *Hames v. Levin*, 51 Pa. St. 412.
- 14 *Harper v. Comm'rs of Elberton*, 23 Ga. 586.
- 15 *Koppikus v. State Cap. Commrs.* 18 Cal. 248. Changed by Constitution of 1879.
- 16 *Ranch v. Comm.* 78 Pa. St. 490.
- 17 *People v. Levison*, 16 Cal. 98; *People v. Ah Fung*, 17 *Ibid.* 379; *People v. Williams*, *Ibid.* 142; *McMinn v. Whelan*, 27 Cal. 300; *People v. Strong*, 30 Cal. 151; *People v. Dick*, 37 Cal. 279; *People v. Bonds*, 1 Nev. 25; *State v. Millain*, 3 Nev. 469; *State v. McGinnis*, 5 Nev. 337; *State v. Ah Tong*, 7 Nev. 148; *State v. Harkin*, 7 Nev. 363; *State v. Tickel*, 13 Nev. 502.
- 18 *Smith v. Pollock*, 2 Cal. 92; *Russel v. Elliot*, 3 Cal. 245; *Erline v. Smith*, 5 Cal. 112; *Gillespie v. Benson*, 18 Cal. 409; *Cahoon v. Levy*, 5 Cal. 294; *Smith v. Billet*, 15 Cal. 23; *Doll v. Feller*, 16 Cal. 432; *Waltham v. Carson*, 10 Cal. 178; *Doll v. Anderson*, 27 Cal. 248; *Bodley v. Furgeson*, 30 Cal. 511; *Brewster v. Bours*, 8 Cal. 501; *Walker v. Sedgewick*, 5 Cal. 192; *Krugh v. Ins. Co.* 77 Pa. St. 15.
- 19 *Trimble's App.* 6 Watts, 133; *Lauman v. Young*, 31 Pa. St. 310; *Cancemi v. People*, 18 N. Y. 129.
- 20 *Comm. v. Shaw*, 1 Pitts. 492; *Cancemi v. People*, 18 N. Y. 129.
- 21 *Vennie v. Archibald*, 3 Colo. 163.

Authority of legislature.—The legislature may regulate the manner of trial by jury,¹ or may substitute new modes by reasonable regulations;² it may clog the right by onerous conditions unless the right be thereby totally prostrated;³ so, an affidavit of defense required by law is not an abrogation of the right.⁴ But a legislature cannot give a tribunal acting without a jury the power to determine legal rights, unless there be some equitable grounds of relief,⁵ nor can it authorize a court to adjudicate a forfeiture of liquors illegally kept.⁶

- 1 *Richards v. Huntrager*, 45 Iowa, 253.
- 2 *Beers v. Beers*, 4 Conn. 539; *Curtis v. Gill*, 34 Conn. 54.
- 3 *Flint Riv. S. Co. v. Foster*, 5 Ga. 194.
- 4 *Lawrence v. Borm*, 86 Pa. St. 225.
- 5 *Haines' App.* 73 Pa. St. 169.
- 6 *State v. Brannan's Liq.* 25 Conn. 286.

Three-fourths.—This section presents a rule to take immediate effect as the organic law of the State, but power was given to the legislature to change or modify the rule.

- Bowen v. Davis*, 48 Tex. 101.

§ 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

Grand jury—Mo. XIV, 11.

Grand jury.—The mode of selecting grand jurors, until altered by law, remains the same under the constitution (art. II, sec. 23) as under the territorial laws.

Wilson v. People, 3 Colo. 325.

§ 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right;¹ and no law shall be passed to restrain or abridge the liberty of speech or of the press.² In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted;³ and the jury shall have the right to determine the law and the fact.⁴ Indictments found, or information laid, for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

¹ Ala. I, 5; Neb. I, 5; Nev. I, 9; N. Y. I, 8; N. C. I, 20; Ohio I, 11; Wis. I, 3. And see Ark. II, 6; Colo. II, 10; Conn. I, 5; Del. I, 5; Fla. I, 10; Ill. II, 4; Ind. I, 9; Iowa, I, 7; Kans. Bill Rts. 11; Ky. XIII, 9; La. I, 4; Me. I, 4; Md. Dec. Rts. 40; Mich. IV, 42; Minn. I, 3; Mo. II, 14; N. J. I, 5; N. C. I, 20; Pa. I, 7; R. I. I, 20; S. C. I, 7; Tenn. I, 19; Tex. I, 8; Va. I, 14.

2 Del. I, 11; Fla. Dec. Rts. 10; Ill. II, 4; Mo. II, 14; Nev. I, 9; N. Y. I, 8; Tex. I, 8; W. Va. III, 7. And see Colo. II, 10; Conn. I, 6; Ind. I, 9; Iowa I, 7; Ky. XIII, 9; Me. I, 4; Mass. Pt. I, 16; Mich. IV, 42; Mo. II, 14; N. H. Pt. I, 22; N. J. I, 5; Or. I, 8; Pa. I, 7; S. C. I, 7.

3 Ala. I, 13; Ark. II, 6; Fla. Dec. Rts. I, 10; Nev. I, 9; Ohio, I, 11; "or" indictments—Mo. II, 14; Nev. I, 9; N. Y. I, 8; Texas, I, 8; W. Va. III, 8; Wis. I, 3. And see Ala. I, 13; Colo. II, 10; Conn. I, 7; Del. I, 5; Ga. I, 19; Ill. II, 4; Ind. I, 10; Iowa I, 7; Kans. Bill Rts. 11; Me. I, 4; Mo. II, 14; Neb. I, 5; N. J. I, 5; R. I. I, 20; S. C. I, 8; Tenn. I, 19; Vt. I, 13; W. Va. III, 17.

4 Ala. I, 13; Colo. II, 10; Del. I, 5; Ga. I, 19; Mich. VI, 25; Neb. I, 3; N. J. I, 5; N. Y. I, 8; Ohio I, 11; Pa. I, 7; S. C. I, 8; Wis. I, 3. See Ala. I, 13; Ark. II, 6; Ill. II, 4; Mo. II, 14; Conn. I, 7; Miss. I, 4; Pa. I, 7; Tenn. I, 19; Tex. I, 8.

Freedom of speech.—The guarantee of freedom of speech applies to words spoken or published in regard to judicial conduct or character.

Storey v. People, 79 Ill. 45.

Freedom of the press.—That the freedom of the press shall not be restrained means that every citizen has the right of investigating the conduct of those who are intrusted with public business,¹ being responsible for the abuse of that liberty.²

1 *Respublica v. Oswald*, 1 Dall. 325.

2 *Runkle v. Mayor*, 3 Yeates, 520; *Respublica v. Dennie*, 4 Yeates, 269; *Comm. v. Odell*, 3 Pittsb. 449.

§ 10. The people shall have the right to freely assemble together to consult for the common good,¹ to instruct their Representatives, and to petition the Legislature for redress of grievances.²

1 Neb. I, 19; Ohio, I, 3; Tex. I, 27.

2 Colo. II, 24; Nev. I, 10; N. C. I, 25; Ohio, I, 3; W. Va. III, 16. And see Ala. I, 26; Ark. II, 4; Colo. II, 24; Conn. I, 16; Del. I, 16; Fla. I, 11; Ga. I, 5; Ill. II, 17; Ind. I, 31; Iowa I, 20; Kans. Bill Rts. 3; Ky. XIII, 24; La. I, 5; Me. I, 15; Md. Dec. Rts. 13; Mass. Pt. I, 19; Miss. I, 6; Mo. II, 29; N. H. Pt. I, 32; N. J. I, 18; N. Y. I, 10; Or. I, 27; Pa. I, 20; R. I. I, 21; S. C. I, 6; Tenn. I, 23; Tex. I, 27; Vt. I, 20; Wis. I, 4.

§ 11. All laws of a general nature shall have a uniform operation.

Fla. Dec. Rts. 12; Kans. II, 17; Iowa, I, 6; Ohio, II, 26. And see Ill. VI, 29.

Uniformity of laws.—The meaning of this section is not that general laws must act alike upon all subjects of legislation, or upon all citizens and persons, but that they shall operate uniformly or in the same manner upon all persons who stand in the same category—that is to say, upon all persons who stand in the same relation to the law, in respect to the privileges and immunities conferred by it, or the acts which it prohibits.¹ It must not grant to any citizen or class of citizens privileges which upon the same terms shall not equally belong to all citizens.² It was not intended by this provision to prevent legislation which is local in its operation or special in its effect, or that all differences founded upon class or sex should be ignored.³ It does not require laws to have a uniform operation unless they are general, and this depends on the legislative purpose discernable in its enactment.⁴ The word "uniform" in this section does not mean "universal."⁵ An act to remedy the failure on the part of a tax collector to publish the names of the owners, etc., cannot be defeated upon the ground that it is not uniform in its operation. Such an act is not "general," but "special."⁶ So, separate fee-bills may be passed for each county,⁷ and the legislature may create more than one revenue district in a county.⁸ This section does not apply to the time when the several courts shall meet, nor to the length of their terms.⁹ The legislature cannot suspend the operation of a general law in favor of an individual.¹⁰

1 *Smith v. Judge Twelfth District*, 17 Cal. 554; *French v. Teschemacher*, 24 *Ibid.* 544; *Bourland v. Hildreth*, 26 *Ibid.* 256; *Brooks v. Hyde*, 37 Cal. 366.

2 *Brooks v. Hyde*, 37 Cal. 366.

3 *Ex parte Smith & Keating*, 38 Cal. 710.

4 *People v. C. P. R. R. Co.* 43 Cal. 398.

5 *Smith v. Judge of Twelfth Dist.* 17 Cal. 547.

6 *Moore v. Patch*, 12 Cal. 265.

7 *Ryan v. Johnson*, 5 Cal. 86; *People v. C. P. R. R. Co.* 43 Cal. 398.

8 *People v. C. P. R. R. Co.* 43 Cal. 398.

9 *Karnes v. People*, 73 Ill. 274.

10 *Holden v. James*, 11 Mass. 396.

§ 12. The military shall be subordinate to the civil power.¹ No standing army shall be kept up by this State in time of peace,² and no soldier shall, in time of peace, be quartered in any house without the consent of the owner;

nor in time of war, except in the manner prescribed by law.³

1 Ark. II, 27; Fla. Dec. Rts. 13; Ill. II, 15; Iowa, I, 14; Minn. I, 14; Mo. II, 27; Neb. I, 17; Nev. I, 11; N. C. I, 24; Tex. I, 24; W. Va. III, 12.

See Conn. I, 18; Del. I, 17; Ind. I, 34; Ky. XIII, 26; La. VI, 125; Md. Dec. Rts. 30; Mass. Pt. I, 17; Mich. XVIII, 8; Miss. I, 25; N. H. Pt. I, 26; N. J. I, 12; Pa. I, 22; R. I. I, 18; S. C. I, 23; Vt. I, 16; Va. I, 15.

2 Ala. I, 28; Ark. II, 27; Iowa, I, 14; Nev. I, 11; Pa. I, 22.

See Del. I, 17; Ky. XIII, 26; Md. Dec. Rts. 29; Mass. Pt. I, 17; Minn. I, 14; N. H. Pt. I, 25; S. C. I, 28; Vt. I, 16; Va. I, 15; W. Va. III, 12.

3 U. S. Amend. III; Ala. I, 29; Ark. II, 27; Colo. II, 22; Conn. I, 19; Del. I, 18; Fla. Dec. Rts. 14; Ill. II, 15; Ind. I, 34; Iowa, I, 15; Ky. XIII, 27; Md. Dec. Rts. 31; Mo. II, 27; Neb. I, 18; Nev. I, 11; N. J. I, 13; N. C. I, 36; Ohio, I, 13; Or. I, 29; Penn. I, 23; R. I. I, 19; S. C. I, 29; Tenn. I, 27; Tex. I, 25; W. Va. III, 12.

See Kans. Bill Rts. 14; Me. I, 18; Mich. XVIII, 9; N. H. Pt. I, 27; Pa. I, 23.

§ 13. In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel.¹ No person shall be twice put in jeopardy for the same offense;² nor be compelled, in any criminal case, to be a witness against himself;³ nor be deprived of life, liberty, or property without due process of law.⁴ The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

1 Appearance—Fla. Dec. Rts. 9; Mo. II, 22; Neb. I, 2; Nev. I, 8; N. Y. I, 6; Pa. I, 9; Tex. I, 10.

2 Jeopardy—Ala. I, 10; Colo. II, 18; Fla. Dec. Rts. 9; Ill. I, 10; Ind. I, 14; Kans. Bill Rts. 1; Neb. I, 12; Nev. I, 8; N. Y. I, 6; Ohio, I, 10; Or. I, 12; Tex. I, 14; W. Va. I, 2.

3 Accused as witness—U. S. Amend. V; Ala. I, 7; Fla. Dec. Rts. 9; Ill. II, 10; Mich. VI, 34; Minn. I, 7; Mo. II, 23; Neb. I, 12; N. Y. I, 6; N. C. I, 11; Ohio I, 1; Pa. I, 10; Tex. I, 10; Wis. I, 8.

4 Due process of law—U. S. Amend. V; Ala. I, 7; Ark. I, 9; Colo. II, 25; Conn. I, 9; Fla. Dec. Rts. 9; Ga. I, 3; Ill. II, 2; Mich. VI, 32; Minn. I, 7; Miss. I, 2; Mo. II, 30; Neb. I, 3; N. Y. I, 6; N. C. I, 17; Pa. I, 10; Tex. I, 19; W. Va. III, 10. And see Del. I, 7; Ga. I, 7; Ill. II, 9; Ind. I, 13; Iowa, I, 10; Kan. Bill Rts. 10; Ky. XIII, 12, 14; La. I, 6; Md. Dec. Rts. 21; Me. I, 6; Mich. VI, 28; Minn. I, 6; Miss. I, 7; Mo. II, 22; Neb. I, 3; N. J. I, 8; S. C. I, 13; Tenn. I, 9; W. Va. III, 14; Wis. I, 7.

Rights of accused.—The legislature may prescribe any form of indictment which furnishes the accused information of what he is required to answer,¹ and a statute may authorize prosecutions by information in cases of misdemeanors.² The provisos of an act are essential parts of the description of the offense, and a statute authorizing their omission is in violation of the constitutional right.³ The law may provide that exceptions to the grand jury must be made at a particular time.⁴ If the accused is indicted under a wrong name he may nevertheless be tried under his real name.⁵ The accused may waive his right to be confronted by the witnesses.⁶

1 *Noles v. State*, 24 Ala. 672; *Schwartz v. State*, 37 Ala. 460; *Elam v. State*, 25 Ala. 43; *Burdine v. State*, *Ibid.* 60; *Sherrod v. State*, *Ibid.* 78; *Thompson v. State*, *Ibid.* 41; *Salomon v. State*, 27 Ala. 26.

2 *Chase v. People*, 2 Colo. 509.

3 *State v. Duke*, 42 Tex. 455.

4 *People v. Magallones*, 15 Cal. 426.

5 *People v. Kelly*, 6 Cal. 210.

6 *Rosenbaum v. State*, 33 Ala. 354.

Right to be heard.—The right to be heard by himself and counsel is a guaranty of a right to be present when the jury returns their verdict.¹ It applies only to courts where facts are to be inquired into, and not to proceedings on appeal;² nor does it entitle him to make a statement of facts to the jury independent of the evidence.³ Counsel have the right to read from law-books in illustration of their arguments,⁴ and if the court imposes a limitation of time for argument before the jury, and the prisoner be thereby deprived of a full defense, it is done at the risk of a new trial.⁵ It need not appear by the record that the prisoner was allowed counsel.⁶

1 *State v. Hughes*, 2 Ala. 102.

2 *Phleming v. State*, Minor, 42.

3 *State v. McCall*, 4 Ala. 643.

4 *People v. Anderson*, 44 Cal. 65.

5 *People v. Keenan*, 13 Cal. 581; *Hunt v. State*, 49 Ga. 255.

6 *Cathcart v. Comm.* 37 Pa. St. 108.

Witness.—The provision as to a party not being a witness against himself applies only to criminal cases.¹ Forcing a man to be a witness against himself is contrary to the principles of a republican government.² The words "criminal case" mean a case involving punishment for crime in an ordinary criminal proceeding,³ or on a charge of misconduct against a public officer.⁴

1 Ex parte Meador, 1 Abb. U. S. 317; Ex parte Strause, 1 Sawy. 606; In re Phillips, 10 Int. Rev. Rec. 107.

2 Wyneham v. People, 13 N. Y. 392.

3 U. S. v. Distillery, 8 Ch. L. N. 57; U. S. v. Parker, 21 Int. Rev. Rec. 251.

4 U. S. v. Collins, 1 Woods, 499.

Jeopardy, when it attaches.—Jeopardy attaches when a party is once placed upon his trial before a competent court and jury, on a valid indictment, and an acquittal before the jury, or if the jury be discharged without legal consent,¹ or unwarrantably,² or if the defendant is acquitted by reason of such variance between the indictment and the proof that conviction is impossible,⁴ whether in cases of felony or misdemeanor.³ Where the provision is "jeopardy of life or limb," it applies only to capital offenses.⁴ In England, the rule extends no further than to cases of conviction or acquittal.⁵ A defendant is not put in jeopardy till a verdict has been rendered;⁷ so, a court may grant a new trial at the instance of the accused;⁸ so, if judgment is arrested or reversed at the instance of the accused.⁹ This clause is intended for the protection of the accused, and may be waived by his consenting to a discharge of the jury.¹⁰ A discharge of a jury because of their inability to agree does not operate as an acquittal;¹¹ in case of pressing necessity courts may discharge the jury.¹² If a reasonable time has been given the jury, the court may discharge it for failure to agree,¹³ but the court should not adjourn except in case of great necessity,¹⁴ as for illness of juror.¹⁵ If the court has no jurisdiction of the offense, or if the jury is discharged without rendering a verdict, or if a failure of the trial ensues from any cause, it does not operate as an acquittal;¹⁶ so, if the term expires the court may order a mistrial and proceed at the next term.¹⁷ The withdrawal of a judge from the bench during trial does not authorize a discharge of the accused.¹⁸

1 State v. Dark, 8 Blatchf. 526; Jones v. State, 15 Ark. 261; State v. McKee, 1 Bailey, 651; State v. Wright, 3 Brev. 421; People v. Gilmore, 4 Cal. 376; People v. Backus, 5 Cal. 278; People v. Webb, 38 Cal. 467; State v. Brown, 16 Conn. 54; Comm. v. Cummings, 3 Cush. 212; State v. Denton, 1 Eng. 169; State v. Jones, 7 Ga. 422; State v. Martin, 3 Hawks,

361; *State v. De Hart*, 2 Halst. 172; 17 Mass. 515; *State v. Spear*, 7 Mo. 644; *State v. Baker*, 19 Mo. 693; *State v. Anderson*, 3 Smedes & M. 751; *State v. Barris*, 3 Tex. 118; *Ernson v. State*, 1 Swan, 14; *State v. Kittle*, 2 Tyler, 471; *People v. Comstock*, 8 Wend. 640.

2 *Ned v. State*, 7 Port. 187.

3 *McCauley v. State*, 26 Ala. 135.

4 *People v. McNealy*, 17 Cal. 333.

5 *McCreary v. Comm.* 27 Pa. St. 323.

6 *Ned v. State*, 7 Port. 187.

7 *O'Brien v. Comm.* 6 Bush, (Ky.) 563; *U. S. v. Perez*, 9 Wheat. 579; *U. S. v. Haskell*, 4 Wash. C. C. 402; *People v. Goodwin*, 18 Johns. 187; *Hoffman v. State*, 20 Md. 425; *State v. Moor*, Walk. 134; *Commonwealth v. Merrill*, Thach. C. C. 1.

8 *State v. Slack*, 6 Ala. 676.

9 *State v. Hughes*, 2 Ala. 102; *Cobia v. State*, 16 Ala. 731.

10 *McCauley v. State*, 26 Ala. 135; *Hughes v. State*, 35 Ala. 351; *Veatch v. State*, 60 Ind. 291.

11 *Lester v. State*, 33 Ga. 329; *McCreary v. Comm.* 29 Pa. St. 323. But see *State v. Alman*, 64 N. C. 364; and *Comm. v. Clue*, 3 Rawle, 498.

12 *Ned v. State*, 7 Port. 187; *U. S. v. Perez*, 9 Wheat. 579; *U. S. v. Gilbert*, 2 Sum. 19; *Commonwealth v. Cook*, 6 Serg. & R. 577; *U. S. v. Wilson*, Bald. 95; *U. S. v. Kerry*, 1 McLean, 434.

13 *Battle's Case*, 7 Ala. 259; *Barrett v. State*, 35 Ala. 406. *Contra*, *Ex parte Vincent*, 43 Ala. 402.

14 *Barrett v. State*, 35 Ala. 406.

15 *Ned v. State*, 7 Port. 187; *McCauley v. State*, 26 Ala. 135; *Comm. v. Merrill*, Thach. C. C. 1, or his insanity.

16 *State v. Cheek*, 25 Ark. 206; *Ned v. State*, 7 Port. 187; *McCauley v. State*, 26 Ala. 135; *Lover v. State*, 4 Ala. 173; *Barrett v. State*, 35 Ala. 406; *State v. Battle*, 7 Ala. 258; *Canter v. People*, 38 How. Pr. 91.

17 *Ned v. State*, 7 Port. 187; *McCauley v. State*, 26 Ala. 135; *Love v. State*, 4 Ala. 173; *U. S. v. Haskell*, 4 Wash. C. C. 410; *U. S. v. Perez*, 9 Wheat. 579; *People v. Goodwin*, 18 Johns. 187.

18 *State v. Abram*, 4 Ala. 272.

Depriving of life, liberty, or property.—This provision simply declares the great common-law principle as to personal rights, applicable to both State and Federal Governments.¹ The right to life includes the right to the body in its completeness and without dismemberment; to liberty—the right to exercise the faculties and follow lawful avocations; to property—the right to acquire, possess, and enjoy it in any way consistent with the equal rights of others and the just demands of the State.² No person can be deprived of his liberty on the ground of neglect to assert his rights.³ This section prohibits an act authorizing the arrest of a citizen without just cause;⁴ yet a rebel in battle may be slain or captured, and thus deprived of his liberty;⁵ but a statute which makes an order of the President a sufficient defense for an act personally done, is void.⁶ A law which authorizes commitment, as an in-

ebriate to a lunatic asylum, on an *ex parte* affidavit, violates this provision.⁷ This section was intended as a constitutional safeguard in the trial of those cases for which it was stipulated the courts shall remain open, and those wherein a party shall have his remedy by due course of law.⁸ Legislative authority cannot reach life, liberty, or property, except for crime, or when the sacrifice is demanded by a just regard for the public welfare.⁹ The right to acquire, hold, and enjoy property is guaranteed by the fundamental law.¹⁰ All property is held under the implied liability that its use shall not be injurious to others.¹¹ A party is protected in the enjoyment of all property, whether real or personal,¹² including the right to the use of a patented machine.¹³ The legislature has no power to take property from one individual and give it to another.¹⁴

1 Young v. McKenzie, 3 Ga. 42; Parkham v. Justice, 9 Ga. 341; Ervine's Appeal, 16 Pa. St. 256.

2 Bertholf v. O'Reilly, 18 Am. Law Reg. N. S. 115.

3 Allen v. Sarah, 2 Har. 434.

4 Griffin v. Wilcox, 21 Ind. 370.

5 Norris v. Doniphan, 4 Met. (Ky.) 335.

6 Johnson v. Jones, 44 Ill. 142.

7 In re Janes, 30 How. Pr. 446.

8 Bonaparte v. Camden &c. R. R. Co. Bald. 220; Mason v. Kennebec &c. R. R. Co. 31 Me. 215; Stevens v. Middlesex Canal, 12 Mass. 466; Stowell v. Flagg, 11 Mass. 364; Aldrich v. Cheshire &c. R. R. Co. 21 N. H. 359; Beekman v. Saratoga &c. R. R. Co. 3 Paige, 45; B. B. &c. R. R. Co. v. Ferris, 26 Tex. 538; Wheelock v. Young, 4 Wend. 647; Bloodgood v. Mohawk &c. R. R. Co. 14 Wend. 51.

9 Atchison &c. R. R. Co. v. Baty, 6 Neb. 37; Taylor v. Porter, 4 Hill, 745; Wilkinson v. Leland, 2 Peters, 658.

10 Commonwealth v. Bacon, 13 Bush, 214.

11 Commonwealth v. Alger, 7 Cush. 84; Bertholf v. O'Reilly, 18 Am. Law Reg. N. S. 120; Comm. v. Bacon, 13 Bush, 214.

12 Ervine's Appeal, 16 Pa. St. 256.

13 Bloomer v. McQuewan, 14 How. 539.

14 Turner v. Althaus, 6 Neb. 54.

Due process of law. — That no person shall be deprived of life, liberty, or property, without due process of law, is a principle of natural justice.¹ "Due process of law" means judgment of law in its regular course of administration through courts of justice,² or such an exertion of the powers of government as the settled maxims of the law permit and sanction, and under such safeguards for protection of individual rights as these maxims prescribe.³ "Due process of law" and "due course of law" are substantially identical terms.⁴ So the private prop-

erty of a citizen cannot be taken by exertion of the legislative power, this being a judicial power.⁵ So, an act of the legislature validating a judgment of a court void for want of jurisdiction contravenes this provision.⁶ So as to acts ratifying sales of real estate made by probate courts where there are defects and errors.⁷ So, depriving a person of property without notice and without examination of witnesses is in contravention of this provision.⁸ A private act is not the law of the land.⁹ A partial law to affect or destroy rights of particular persons or classes of persons is not the law of the land.¹⁰ The law must furnish some just form or mode in which the duty of a citizen shall be determined before he can be visited by a penalty for a non-performance.¹¹

1 *Brown v. Morrison*, 5 Ark. 217.

2 *Felter v. Wilt*, 46 Pa. St. 460; *Craig v. Kline*, 65 *Ibid.* 413; *Barker v. Kelly*, 11 Minn. 430; *Rowan v. State*, 30 Wis. 129; *State v. Becht*, 23 Minn. 413; *Huber v. Rely*, 53 Pa. St. 112; *Westervelt v. Gregg*, 12 N. Y. 202; *Rees v. City of Watertown*, 19 Wall. 122.

3 *Beyman v. Black*, 47 Tex. 553.

4 *State v. Ashley*, 1 Ark. 513.

5 *Turner v. Althaus*, 6 Neb. 54.

6 *Pryor v. Downey*, 50 Cal. 389.

7 *Pryor v. Downey*, 50 Cal. 389.

8 *Sullivan v. Oneida City*, 61 Ill. 242.

9 *Norman v. Helst*, 5 Watts & S. 171; *Brown v. Hummel*, 6 Pa. St. 57. And see *Greene v. Briggs*, 1 Curt. 314.

10 *A. & N. R. R. v. Baty*, 6 Neb. 37.

11 *Philadelphia v. Scott*, 81 Pa. St. 80.

What not inhibited.—This clause does not deny to the legislature the power to make rules and regulations respecting the use and enjoyment of property;¹ so, the legislature may regulate warehouses and fix the compensation for storage,² or it may authorize the impounding of animals taken damage feasant, and their retention till damages and costs are paid,³ and may authorize their sale if not redeemed after reasonable notice;⁴ but whether it can empower the court to sell without process at law, not decided.⁵ It may provide that trespassing animals may be sold and disposed of as directed,⁶ and may delegate this power to municipal corporations.⁷ Private roads may be vacated by prescription, by an act of the legislature,⁸ and a grant of franchise to a ferry may be annulled or resumed.⁹ A statute may authorize judgment against a surety as well as against a principal;¹⁰ so, the enforcement of a valid tax is not a taking of property without due process of law.¹¹ The legislature may provide that

conveyances previously made are not invalid because not executed and acknowledged in the mode therein prescribed.¹² An incorporation act may authorize arrest and detention of a violator of ordinances without a warrant,¹³ or may authorize holding a special term of court.¹⁴ Due process of law does not necessarily import a jury trial,¹⁵ but includes summary remedies.¹⁶ Civil proceedings for contempt are not included.¹⁷ A statute making the property-owner liable for damages resulting from the illegal use of property by a tenant is valid.¹⁸ An assessment for grading and improving streets is not a taking of property without compensation, or without due process of law.¹⁹ Private property may be taken by a commander in war in case of exigency, but the case must be urgent.²⁰ Provisions for searches and seizures to aid in the collection of the revenue are not repugnant to this amendment.²¹ So, processes for seizure and assessment are within the discretion of the legislature.²²

1 *Mann v. Illinois*, 69 Ill. 80.

2 *Munn v. Illinois*, 69 Ill. 80.

3 *Rood v. McCarger*, 49 Cal. 117.

4 *Dillard v. Webb*, 55 Ala. 468; *Beyman v. Black*, 47 Tex. 558.

5 *Rood v. McCarger*, 49 Cal. 117.

6 *Squares v. Campbell*, 41 How. Pr. 193.

7 *Dillard v. Webb*, 55 Ala. 468; *Beyman v. Black*, 47 Tex. 558.

8 *Krier's Road*, 73 Pa. St. 109.

9 *Dyer v. Tuscaloosa B. Co.* 2 Port. 296.

10 *Hennles v. People*, 70 Ill. 100; *Whitehurst v. Coleen*, 53 Ill. 247.

11 *Emery v. San Francisco*, 28 Cal. 345; *Hagar v. Yolo Co.* 47 Cal. 223.

12 *Ala. L. Ins. & T. Co. v. Boykin*, 38 Ala. 510.

13 *Johnson v. Mayor &c.* 46 Ga. 80.

14 *Spann v. State*, 47 Ga. 553.

15 *Ex parte Meador*, 1 Abb. U. S. 317.

16 *Martin v. Mott*, 12 Wheat. 19; *U. S. v. Ferreira*, 13 How. 40; *Ex parte Meador*, 1 Abb. U. S. 317; *Murray v. Hoboken &c. Co.* 18 How. 272.

17 *State v. Becht*, 23 Minn. 411.

18 *Bertholf v. O'Reilly*, 18 Am. Law Reg. N. S. 124; *Dobbins v. U. S.* 96 U. S. 395.

19 *Griffin v. Mayor*, 4 N. Y. 419.

20 *Mitchell v. Harmony*, 13 How. 115. And see *Ex parte Milligan*, 4 Wall. 2; *Clark v. Mitchell*, 64 Mo. 564.

21 *Matt. of Platt*, 7 Ben. 261; 19 Int. Rev. Rec. 132; *Murray v. Hoboken &c. Co.* 18 How. 277; *Ames v. Port Huron &c. Co.* 11 Mich. 139.

22 *Pullan v. Kinsinger*, 2 Abb. U. S. 94; *Davidson v. New Orleans*. 96 U. S. 97.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court, for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law.

U. S. Amend. V; Colo. II, 15; Fla. Dec. Rts. 9; Mo. II, 21; Neb. I, 21; N. Y. I, 6; Pa. I, 10; Tex. I, 17; W. Va. III, 9.

"Or damaged"—Ark. II, 23; Colo. II, 15; Ill. II, 13; Mo. II, 21; Neb. I, 21; Pa. I, 10; Tex. I, 17; West. Va. III, 9. And see Kan. XII, 4.

See Ala. I, 24; Ark. II, 23; Ill. II, 13; N. Y. I, 7; S. C. I, 23; Wis. IX.

Eminent domain.—The right of eminent domain is inherent in government,¹ and is only declarative of the common law,² and in affirmance of its great principles.³ This clause is a disabling and not an enabling one,⁴ and prospective in its operation.⁵ The legislative authority to expend money is not confined to merely keeping the government in motion.⁶ There are no limits to the power of the State over private property other than those placed on the State by the Constitution.⁷ It may pass laws for opening private roads;⁸ but it cannot take property for a purely private use;⁹ nor can it take property of one individual to give it to another.¹⁰ It may prescribe the proceedings on taking of land for public use, and the time at which the taking shall be deemed complete,¹¹ and may confer the right to enter upon land pending proceedings for its condemnation.¹² Land is not taken for public use until the last act prescribed is performed.¹³ So, the mere laying out of streets through private property is not a taking—only when they are actually opened and applied to public use are the owners entitled to compensation.¹⁴ Property, as applied to land, embraces all titles, legal and equitable, perfect or imperfect;¹⁵ and the right to the water-flow is an incident to property.¹⁶ Property means the right of the owner in relation to it—the right of

its use, enjoyment, and disposal.¹⁷ The power, under the right of eminent domain, embraces all kinds of property, including franchises,¹⁸ of which no one can be deprived without his own consent.¹⁹ Public use is a use which concerns the whole community as distinguished from one which concerns only a particular individual or a particular number of individuals;²⁰ its essential features being that it is open to the indefinite public,²¹ and public purposes and public policy are equally of the same import.²² It is left in a large measure to legislative determination.²³

1 Jones v. Walker, 2 Palme, 688; Glimmer v. Lime Point, 18 Cal. 229; Young v. McKenzie, 3 Kelly, 31; Avery v. Fox, 1 Abb. U. S. 246; Swan v. Williams, 2 Mich. 427.

2 Wagner v. Gage Co. 3 Neb. 241.

3 Parham v. Justices, 9 Ga. 341.

4 Harvey v. Thomas, 10 Watts. 66.

5 Chicago v. Rumsey, 87 Ill. 349.

6 Stockton & C. R. R. Co. v. Stockton, 41 Cal. 177; Attorney-General v. Board of Judges, 38 Cal. 291.

7 Monongahela Nav. Co. v. Coons, 6 Watts. & G. 113.

8 Sherman v. Buick, 32 Cal. 255.

9 Consol. Chan. Co. v. C. P. R. R. Co. 51 Cal. 269; Stockton & C. R. R. Co. v. Stockton, 41 Cal. 147; Brewer v. Bowman, 9 Ga. 37; Sadler v. Langham, 34 Ala. 311; Waddell's App. 84 Pa. St. 90; Finney v. Somerville, 80 Pa. St. 59; U. S. v. Chicago, 7 How. 195; U. S. v. Ames, 1 Wood. & M. 76; Newcomb v. Smith, 1 Chand. 71. But see Ex parte Barnard, 4 Cranch C. C. 294.

10 Powers v. Bergen, 6 N. Y. 358; Pitts v. Scott, 1 Pa. St. 309; Lambert v. Hogan, 2 Ibid. 24; Brown v. Hummel, 6 Pa. St. 91; McMichael v. Kelton, 13 Ibid. 217; Ervine's App. 16 Ibid. 264; Kneass' App. 31 Pa. St. 90; Lances' App. 55 Ibid. 16; Palalret's App. 67 Pa. St. 479.

11 Fox v. W. P. R. R. Co. 31 Cal. 538.

12 Fox v. W. P. R. R. Co. 31 Cal. 538.

13 Contra Costa R. R. Co. v. Moss, 23 Cal. 323; Napa Val. R. R. Co. v. Napa Co. 30 Cal. 435; Sherman v. Buick, 32 Cal. 255.

14 City of Pittsburgh, 2 Watts. & C. 320.

15 Teschemaker v. Thompson, 18 Cal. 11.

16 Persons v. Hill, 33 Ga. 141.

17 Dorman v. State, 34 Ala. 216.

18 Ala. & F. R. R. Co. v. Kenney, 39 Ala. 307; Enfield T. B. Co. v. Hartford & N. H. R. R. Co. 17 Conn. 62, 461; West Riv. Br. Co. v. Dix, 6 How. 507; Wilkinson v. Leland, 2 Peters, 658; Charles Riv. Br. v. Warren Br. 11 Peters, 545; Bonaparte v. Camden & C. R. R. Co. Bald. 205; Lexington & O. R. R. Co. v. Applegate, 8 Dana, 289; Tuckahoe Co. v. Railroad Co. 11 Leigh. 42; Piscataqua & C. Br. v. N. H. Br. 7 N. H. 35; Barber v. Andover, 8 N. H. 338; Pierce v. Somersworth, 10 N. H. 370; Backus v. Lebanon, 11 N. H. 20; Varick v. Smith, 5 Paige, 146; Dyer v. Tuskaloosa Br. Co. 2 Port. 296; Boston W. P. Co. v. Boston & C. R. R. Corp. 41 Mass. 360; L. & C. R. R. Co. v. Chappell, 1 Rice, 383; Armington v. Barnett, 15 Vt. 745; West Riv. Br. Co. v. Dix, 16 Vt. 446; Bloodgood v. M. & C. R. R. Co. 18 Wend. 14.

19 Beall v. Beall, 8 Ga. 210.

20 *Gilmer v. Lime Point*, 18 Cal. 229; *Heyneman v. Blake*, 19 Cal. 579. And see *People v. Kerr*, 3 Barb. 357.

21 *Perkins v. Slack*, 36 Pa. St. 270.

22 *Stockton & V. R. R. Co. v. Stockton*, 41 Cal. 168.

23 *Stockton & V. R. R. Co. v. Stockton*, 41 Cal. 168.

Injury to property.—Any injury to the property is a taking within the meaning of this provision,¹ as an interruption to the use of property.² Where the law strips property of its attribute the owner is within this provision.³ This provision refers only to a direct appropriation, and not to consequential injuries resulting from the exercise of lawful power.⁴

1 *Pumpelly v. Green Bay Co.* 13 Wall. 180; *Pratt v. Crown*, 3 Wis. 613; *Walker v. Shepardson*, 4 Ibid. 511; *Goodall v. Milwaukee*, 5 Wis. 39; *Weeks v. Milwaukee*, 10 Wis. 242; *Fisher v. Horicon Iron Co.* Ibid. 353; *Newell v. Smith*, 15 Wis. 104. But see *Alexander v. Milwaukee*, 16 Wis. 248.

2 *Pumpelly v. Green Bay Co.* 13 Wall. 166; *Munn v. Illinois*, 94 U. S. 144.

3 *Wynehamer v. People*, 13 N. Y. 378.

4 *Legal Tender Cases*, 12 Wall. 457.

Legislative discretion.—The legislature is to determine what objects are of such public importance as to justify the exercise of this right,¹ and of the public necessity requisite to the taking of the property.² So, the public character of railroads and their necessity for public use are political uses and rest in the discretion of the legislature.³ Railroads concern public interest as a matter of legal judgment,⁴ and the legislature may authorize a railroad to take private property on making just compensation.⁵ So, plank roads, canals, and public grist-mills are public uses for which property may be taken.⁶ So, supplying a city with water is also a public use.⁷ The legislature may limit and regulate the use to which private property may be put, as by prohibiting distillation or sale of spirituous liquors.⁸ So, a regulation of trade does not come within this prohibition,⁹ nor does a forfeiture of liquors illegally kept come within its provisions.¹⁰ So, this section has no application to the taking of property by taxation,¹¹ or to the enforcement of a valid tax,¹² or to an act providing for receipt and payment into the treasury offices by tax collector.¹³ It is a limitation on the right of eminent domain, and does not apply to the taxing power.¹⁴

1 *Mimms v. Macon &c. R. R. Co.* 3 Kelly, 333.

2 *Sadler v. Langham*, 34 Ala. 311; *Parham v. Justices*, 9 Ga. 341.

3 *Contra Costa R. R. Co. v. Moss*, 23 Cal. 323; *Napa Val. R. R. Co. v. Napa Co.* 30 Cal. 435; *Sherman v. Buick*, 32 Cal. 255.

4 *Stockton & V. R. R. Co. v. Stockton*, 41 Cal. 169; *Napa Val. R. R. Co. v. Napa Co.* 30 Cal. 437; 1 Wall. 206; *Stewart v. Polk Co.* 30 Iowa, 9; *Bridgeport v. Housatonic R. R. Co.* 15 Conn. 475; *Bloodgood v. Mohawk &c. R. R. Co.* 18 Wend. 9; *Stein v. Mayor &c. of Mobile*, 24 Ala. 591.

5 *Whilleman v. Wilmington &c. R. R. Co.* 2 Harring. 514; *Aldridge v. Tuscumbia R. R. Co.* 2 Stew. & P. 199; *Davis v. Tuscumbia R. R. Co.* 4 Stew. & P. 421; *Bradley v. New York &c. R. R. Co.* 21 Conn. 305; *Enfield T. B. Co. v. Hartford &c. Co.* 17 Conn. 62, 461.

6 *Sadler v. Langham*, 34 Ala. 311.

7 *Burden v. Stein*, 24 Ala. 130; 27 Ala. 104; *Stein v. Ashby*, *Ibid.* 521.

8 *Dorman v. State*, 34 Ala. 216; *Ingram v. State*, 39 Ala. 247.

9 *Munn v. Illinois*, 69 Ill. 80.

10 *State v. Brannan's Liq.* 25 Conn. 236.

11 *Booth v. Woodbury*, 32 Conn. 130; *Bridgeport v. Housatonic R. R. Co.* 15 Conn. 501.

12 *Emery v. Gas Co.* 28 Cal. 345; *Hagar v. Yolo Co.* 47 Cal. 234.

13 *Ream v. Siskiyou Co.* 36 Cal. 620.

14 *Gilman v. Sheboygan*, 2 Black, 510.

Compensation.—The right to take private property for public use cannot be asserted by mere enactment.¹ The power is conditioned on compensation to be made to the owner, and is founded on public utility.² Injury to land is a subject for compensation;³ so of injury to water.⁴ The obligation to make compensation is commensurate with the right,⁵ and as such is a part of the constitution.⁶ Provision must be made for just compensation to the owner,⁷ and an act which fails to provide compulsory process for the enforcement of payment of just compensation is unconstitutional and void.⁸ It is sufficient if adequate remedy be provided by which the owner can obtain compensation without unreasonable delay.⁹ The compensation must precede or accompany the taking,¹⁰ and must be made within a short period or the privilege will be waived,¹¹ and a law may limit the time within which the owner's claim shall be presented,¹² and may provide the steps necessary.¹³ It may declare that the resulting benefits shall be set off in part satisfaction.¹⁴ When the State exercises this power it must provide means of payment; but corporations or individuals must pay or secure the price.¹⁵ Private property may be taken for public use without compensation in cases of extreme necessity,¹⁶ as where property is destroyed to prevent the spreading of fire.¹⁷ So, States may authorize a turnpike company to lay out a road through private grounds without making compensation for the soil.¹⁸ To authorize a taking there must be an adjudication upon the facts which render it proper.¹⁹ The determination of what is just compensation is a judicial act to be performed only by the ju-

dicial department,²⁰ and when not made by the State it must be ascertained by a jury, for property damaged as well as taken.²¹ The measure of compensation must be determined in some just and adequate manner,²² the true test being the market value; but reference may be had not merely to uses but to the capabilities of the land taken,²³ and inquiry may be made into all the legitimate purposes to which the property could be put.²⁴ Just compensation means just in regard to the public as well as to the individual,²⁵ and consequential damages may be awarded.²⁶

1 Cook v. South Park Commrs. 61 Ill. 115.

2 Philadelphia v. Scott, 81 Pa. St. 80; Barron v. Baltimore, 7 Peters, 243; Bucker v. State, 7 Bank. Reg. 262; Case of De Groot, 9 Op. Att. Gen. 481; Young v. McKenzie, 3 Ga. 31; Danville &c. R. R. Co. v. Comm. 73 Pa. St. 29.

3 Bradley v. N. Y. & N. H. R. R. Co. 21 Conn. 312.

4 Denslow v. N. H. & N. Co. 16 Conn. 105; Persons v. Hill, Sup. 33 Ga. 141.

5 Hooker v. N. H. & N. Co. 14 Conn. 152; Young v. Harrison, 6 Ga. 130; Carr v. Georgia &c. R. R. Co. 1 Kelly, 524; Miller v. Craig, 3 Stock. 106; Buffalo &c. R. R. Co. v. Ferris, 26 Tex. 588; Bloodgood v. Mohawk &c. R. R. Co. 48 Wend. 9.

6 State v. Newson, 5 Ired. 50; Raleigh &c. R. R. Co. v. Davis, 2 Dev. & B. 451; State v. Glenn, 7 Jones, 321; Cornelius v. Glenn, Ibid. 512; Johnson v. Rankin, 70 N. C. 550; Young v. McKenzie, 3 Ga. 31.

7 Sadler v. Langham, 34 Ala. 311; McCann v. Sierra Co. 7 Cal. 120; San Francisco v. Scott, 4 Cal. 114; Powers v. Armstrong, 19 Ga. 427; Young v. McKenzie, 3 Kelly, 31; Morgan v. King, 33 Pa. St. 301; State v. Pool, 74 N. C. 407; Bawley v. Harrall, 19 Conn. 151; Cook v. South Park Commrs. 61 Ill. 115; Danville &c. R. R. Co. v. Comm. 73 Pa. St. 29; State v. Seymour, 6 Vroom, 47; State v. Hudson Co. Av. Commrs. 8 Vroom, 12; State v. Sewer Commrs. 10 Vroom, 665.

8 S. W. R. R. Co. v. S. & A. T. Co. 46 Ga. 43.

9 Heston v. Canal Commrs. Bright, 183; Gilmer v. Lime Point, 18 Cal. 229; Harrisburg v. Crangle, 1 Pa. St. 132; 3 Watts & S. 460; Pittsburgh v. Scott, 1 Pa. St. 309; Commrs. v. Wood, 10 Ibid. 197; Menges v. Wertman, 1 Pa. St. 218; Mifflin v. Railroad Co. 16 Pa. St. 193; Monongahela Nav. Co. v. Coons, 6 Watts & S. 113; Commrs. v. Pittsburgh &c. R. R. Co. 58 Pa. St. 26; Hattermehl v. Dickerson, 8 Phila. 282. And see Yost's Rep. 17 Pa. St. 524.

10 Johnson v. Alameda Co. 14 Cal. 106; Gillan v. Hutchinson, 16 Cal. 153. That no entry on land can be made till compensation is paid, see People v. McRoberts, 63 Ill. 38. But see Rockford &c. Co. v. Copping, 86 Ill. 510; Provolt v. Chicago &c. R. R. Co. 57 Mo. 256.

11 Bensley v. Mountain Lake Wat. Co. 13 Cal. 306.

12 Rexford v. Knight, 11 N. Y. 308.

13 Potter v. Ames, 43 Cal. 79.

14 S. F. & A. R. R. Co. v. Caldwell, 31 Cal. 367.

15 McClinton v. Pittsburg &c. R. R. Co. 66 Pa. St. 404.

16 Parham v. Justices, 9 Ga. 341.

17 Surocco v. Geary, 3 Cal. 69; Dunbar v. Alcalde, 1 Cal. 355; Bishop v. City of Macon, 7 Ga. 200.

- 18 *McClenachan v. Curwen*, 6 Binn. 509; 3 Yeates, 373.
- 19 *Philadelphia v. Scott*, 31 Leg. Int. 12.
- 20 *Rich v. Chicago*, 59 Ill. 236; *Cook v. South Park Commrs.* 61 Ill. 115; *Kline v. Defenbaugh*, 64 Ill. 291; *Pusey's App.* 83 Pa. St. 67; *Williams v. Pittsburg*, 83 Pa. St. 71. Courts may determine whether a use is a public use, but not the extent to which it may be taken—*St. Louis Co. Ct. v. Griswold*, 58 Mo. 175.
- 21 *People v. McRoberts*, 62 Ill. 38; *Kline v. Defenbaugh*, 64 Ill. 291.
- 22 *Enfield T. B. Co. v. Conn. Riv. Co.* 7 Conn. 49.
- 23 *Haslam v. Galena & c. Co.* 64 Ill. 353.
- 24 *Harrison v. Young*, 9 Ga. 359.
- 25 *Chesapeake & O. Can. Co. v. Key*, 3 Cranch, C. C. 569.
- 26 *Hannibal Br. Co. v. Schaubacher*, 57 Mo. 562; *Quincy & c. R. R. Co. v. Ridge*, *Ibid.* 599.

Delegation of powers.—The legislature may delegate to municipal corporations the power of taxation for local purposes, or to aid public improvements,¹ and an act may authorize a popular vote with a view of imposing a local tax for local purposes,² but this power cannot be delegated to individuals.³ The legislature may require the owners of property benefited to pay damages sustained by those whose property is taken, in proportion to the benefits received;⁴ but if the whole benefit be a public one, and the owners do not derive any special benefit, such an act is unconstitutional.⁵ The rights of property-holders to damages cannot be affected by subsequent legislation.⁶ This power may be exercised through the medium of private corporations;⁷ so, the legislature may grant a foreign corporation the privilege to construct a telegraph on public domain if it provides compensation for private property taken.⁸ The provisions in the new constitution of Illinois, that the fee shall not pass to lands taken for the right of way, has no application to proceedings completed before the adoption of the new constitution.⁹

1 *Stein v. Mayor & c.* 24 Ala. 591; *Mayor & c. v. Winter*, 29 Ala. 65; *Gibbons v. Mobile & c. R. R. Co.* 36 Ala. 410; *People v. Sherman*, 83 Ill. 165.

2 *Stockton & V. R. R. Co. v. Stockton*, 41 Cal. 185; *Dubuque Co. v. Dubuque & P. R. R. Co.* 4 Iowa, 1; *Iowa v. Wapello Co.* 13 Iowa, 358.

3 *Loughbridge v. Harris*, 42 Ga. 500.

4 *People v. Mayor of Brooklyn*, 4 N. Y. 419; *Fenelon's Petl.* 7 Pa. St. 175; *McMasters v. Comm.* 3 Watts, 396; *Livingston v. N. Y.* 8 Wend. 85. *Baldwin v. City of Newark*, 9 Vroom, 158.

5 *Commrs. v. Curren*, 29 Leg. Int. 28.

6 *Elgin v. Eaton*, 83 Ill. 535.

7 *Mimms v. Macon & c. R. R. Co.* 3 Kelly, 333.

8 *S. W. R. R. Co. v. S. & A. T. Co.* 46 Ga. 43.

9 *Toledo & c. Co. v. Pence*, 68 Ill. 542.

§ 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud,¹ nor in civil actions for torts, except in cases of willful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.²

¹ Ark. II, 16; Colo. II, 12; Fla. Dec. Rts. 16; Iowa, I, 19; Kans. Bill Rts. 16; Neb. I, 20; N. C. I, 16; Ohio, I, 15; N. C. I, 16; S. C. I, 20; Tex. I, 18.

² Iowa, I, 19; Mich. VI, 33; N. J. I, 17; Nev. I, 14.

See Ala. I, 21; Ga. I, 18; Ill. II, 21; Ky. XIII, 19; Mo. III, 33; Mich. VI, 33; Minn. I, 12; Miss. I, 11; Mo. II, 16; N. J. I, 17; Or. I, 20; Pa. I, 16; R. I. I, 11; Tenn. I, 18; Vt. II, 33; Wis. I, 16.

Construction.—This constitutional provision has reference only to debts arising *ex contractu*.¹ It is applicable to a proceeding by *ne exeat*.² In a suit to recover money received by a person as agent, such person cannot be arrested without showing fraud on his part, or a demand by the principal and a refusal by him to pay.³ A sum ordered to be paid pending a divorce suit, for counsel fees, etc., is not a debt within the meaning of the constitution.⁴ This section embraces a case of fraud in making the contract.⁵

¹ Rich v. People, 66 Ill. 513.

² Malcolm v. Andrews, 68 Ill. 100.

³ In the Matter of Holdforth, 1 Cal. 438. See Soule v. Hayward, 1 Cal. 345.

⁴ Ex parte Perkins, 18 Cal. 60.

⁵ Melvin v. Melvin, 72 N. C. 384.

§ 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

U. S. Const. I, 9 (3); Ala. I, 23; Ark. II, 17; Colo. II, 11; Fla. Dec. Rts. 17; Ill. II, 14; Ind. I, 24; Iowa, I, 21; Ky. XIII, 20; Me. I, 11; Mich. IV, 43; Minn. I, 11; Miss. I, 9; Mo. II, 15; Neb. I, 16; Nev. I, 15; Pa. I, 17; R. I. I, 12; S. C. I, 21; Tex. I, 16; W. Va. III, 4; Wis. I, 12. See La. VI, 110; Md. Dec. Rts. 17; N. H. Ft. I, 23; N. J. IV, 7; N. C. I, 32; Or. I, 22; Tenn. I, 20; Va. III, 14.

Bills of attainder.—A bill of attainder is a legislative act which inflicts punishment without a judicial trial, absolutely or conditionally.¹ Any deprivation or suspension of any inalienable right is a punishment,² as depriving a party of the privilege of enforcing a contract;³ or

depriving of the right to pursue an avocation, as of teacher or clergyman;⁴ or depriving of a right to a rehearing in an action.⁵ But where a right is the creature of the organic law of the State, as the right to vote, the State may provide for an expurgatory oath as a condition to its exercise;⁶ so of the right to practice law.⁷

1 *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263.

2 *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263.

3 *McNealy v. Gregory*, 13 Fla. 417.

4 *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263; *Murphy's Case*, 41 Mo. 339; *State v. Heighland*, 41 Mo. 388. But see *State v. Gareschl*, 36 Mo. 256.

5 *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263.

6 *Anderson v. Baker*, 23 Md. 531; *Blair v. Ridgley*, 41 Mo. 63; *State v. Neal*, 42 Mo. 119; *Randolph v. Good*, 3 W. Va. 551.

7 *Cummings v. Missouri*, 4 Wall. 333; 36 Mo. 263; *Ex parte Garland*, 4 Wall. 379.

Ex post facto laws.—The words *ex post facto* relate exclusively to penal laws,¹ and such a law is one which renders an act punishable which was not punishable at the time it was committed,² or which renders an act punishable in a manner different from when it was committed,³ or which changes the punishment after conviction of the offense,⁴ or aggravates the punishment by a law posterior to the commission of the offense,⁵ or adds a new punishment or increases an old one,⁶ or which inflicts a punishment for an act not punishable at the time of its commission.⁷ It applies to laws inflicting punishments or penalties.⁸ The prohibition in the Constitution means that the State shall not pass laws after an act which shall have relation to such act, and shall punish him for having performed it.⁹ It was not intended to prohibit the passage of retrospective laws;¹⁰ a statute, to come within this provision, must be not only retroactive, but must retroact by way of punishment.¹¹ A law which mitigates the punishment is not an *ex post facto* law.¹² So, a statute may provide for the remission of part of the offense.¹³ A statute which provides that a party the second time convicted of petit larceny is to be deemed guilty of a felony, is not an *ex post facto* law.¹⁴ A statute may make the breach of a pre-existing contract criminal, although it was before only subject to a suit for damages.¹⁵ A statute adding penalties and instituting new methods of proceeding cannot be applied to prior offenses.¹⁶ A statute allowing a divorce for an act which was no ground for a divorce at the time it was committed, is an *ex post facto* law;¹⁷ but a statute allowing the court, in granting a

divorce, to decree that the guilty party shall not contract marriage during the lifetime of the other party, is not an *ex post facto* law.¹⁸

1 *Calder v. Bull*, 3 Dall. 390; *Watson v. Mercer*, 8 Peters, 109; *Carpenter v. Pennsylvania*, 17 How. 456; *Ex parte Garland*, 4 Wall. 390; *Lock v. New Orleans*, 4 Wall. 172; *Elliott v. Mayfield*, 4 Ala. 417; *Holman v. Bk. of Norfolk*, 12 Ala. 379; *Bridgeport v. Hubbell*, 5 Conn. 240; *Wilder v. Lampkin*, 4 Ga. 209; *Boston v. Cummings*, 16 Ga. 102; *Locke v. Dane*, 9 Mass. 360; *Comm. v. Lewis*, 6 Binn. 271; *Aldridge v. Tuscaloosa &c. R. R. Co.* 2 Stew. & P. 199; *Bloodgood v. Carrack*, 5 Stew. & P. 276.

2 *Fletcher v. Peck*, 6 Cranch, 87; *Cummings v. Missouri*, 4 Wall. 332; *Matt. of Dorsey*, 5 R. I. 190; *Gut v. State*, 9 Wall. 38.

3 *Fletcher v. Peck*, 6 Cranch, 138; *Hartung v. People*, 22 N. Y. 95; *Shepherd v. People*, 25 N. Y. 406; *State v. McDonald*, 20 Minn. 138.

4 *Hartung v. People*, 22 N. Y. 95.

5 *U. S. v. Gilbert*, 2 Sum. 101; *Dickinson v. Dickinson*, 3 Murph. 327; *Shepherd v. People*, 25 N. Y. 406.

6 *Wilson v. Ohio &c. R. R. Co.* 64 Ill. 542; *Ross v. Riley*, 19 Mass. 165; *State v. Salomons, Riley*, 99; *Hartung v. People*, 22 N. Y. 95; 26 N. Y. 167.

7 *Wilson v. Ohio &c. R. R. Co.* 64 Ill. 542; *Falconer v. Campbell*, 2 McLean, 195.

8 *Fisher v. Cockerill*, 5 Mon. 129.

9 *Calder v. Bull*, 3 Dall. 386; *Cummings v. Missouri*, 4 Wall. 277; 36 Mo. 263.

10 *Watson v. Mercer*, 8 Peters, 109; *Buckner v. Street*, 1 Dill. 254; *Randall v. Kreiger*, 2 Dill. 444; *Milner v. Huber*, 3 McLean, 217; *Bloomer v. Stolley*, 5 McLean, 165; *Johnston v. Van Dyke*, 6 McLean, 441; *Locke v. New Orleans*, 4 Wall. 173; *Bennett v. Boggs*, Bald. 74; *Holman v. Bk. of Norfolk*, 12 Ala. 369; *Albee v. May*, 2 Paine, 74; *Sedgwick v. Bunker*, 16 Kans. 498; *Tilton v. Swift*, 40 Iowa, 78; *Baldwin v. Newark*, 38 N. J. 158; *Rich v. Flanders*, 39 N. H. 304; *Tate v. Stooltzfoos*, 16 Serg. & R. 35; *Lane v. Nelson*, 79 Pa. St. 407.

11 *Hartung v. People*, 22 N. Y. 103; *State v. Paul*, 5 R. I. 190; *State v. Keeran*, 5 R. I. 497.

12 *Turner v. State*, 40 Ala. 21; *Comm. v. Gardner*, 77 Mass. 438; *State v. Arlin*, 39 N. H. 179; *State v. Kent*, 65 N. C. 311; *Turner v. State*, 40 Ala. 21.

13 *Calder v. Bull*, 3 Dall. 386; *Fletcher v. Peck*, 6 Cranch, 137; *State v. Arlin*, 39 N. H. 179; *Hartung v. People*, 22 N. Y. 95.

14 *Ex parte Gutierrez*, 45 Cal. 430; *Rand v. Comm.* 9 Gratt. 738; *Ross v. Riley*, 19 Mass. 165; *Plumbly v. Comm.* 43 Mass. 413. But the second offense must be committed after conviction for the first to warrant the enhanced penalty—*People v. Butler*, 3 Cow. 347.

15 *Blann v. State*, 39 Ala. 353.

16 *Miles v. State*, 40 Ala. 39; *Moore v. State*, Ibid. 49; *Stephens v. State*, Ibid. 67; *Miller v. State*, Ibid. 54.

17 *Dickinson v. Dickinson*, 3 Murph. 327; *Clark v. Clark*, 10 N. H. 380. *Contra*, *Carson v. Carson*, 40 Miss. 349.

18 *Elliott v. Elliott*, 38 Md. 357.

What not *ex post facto*.—The words "*ex post facto*" do not relate to criminal procedure.¹ A law affecting the remedy only is not *ex post facto*;² so, statutes creating new tribunals,³ or changing the place of trial,⁴ or a statute operating on the forms of proceeding,⁵ or allowing amendments,⁶ or changing the mode of summoning juries,⁷ or allowing the State a certain number of peremptory challenges,⁸ or reducing the number thereof,⁹ or a statute allowing counsel for the State to open and close the argument instead of alternating,¹⁰ or a law setting aside a decree and granting a new trial¹¹ is not *ex post facto*. A statute authorizing the jury to assess the amount of the fine to be imposed or punishment to be inflicted is not an *ex post facto* law.¹² Any change in reference to prison discipline or penal administration may take effect on past as well as future offenses.¹³ A State law which repeals a prior law before the performance of the acts necessary to give vested rights is not an *ex post facto* law, nor a law prescribing conditions under which, alone, a thing may be used in future;¹⁴ nor a law exacting an expurgatory oath as a condition for holding an office.¹⁵ A law regulating escheats which does not refer to crimes, pains, and penalties is not an *ex post facto* law;¹⁶ nor is a law imposing a tax on transactions of a preceding year;¹⁷ nor an act equalizing taxation.¹⁸

1 *People v. Mortimer*, 46 Cal. 114; *Perry v. Comm.* 3 Gratt. 632; *Walston v. Comm.* 16 B. Mon. 15; *Manning v. State*, 14 Tex. 402.

2 *Bank of U. S. v. Longworth*, 1 McLean, 35.

3 *Comm. v. Phillips*, 28 Mass. 28; *State v. Sullivan*, 14 Rich. 281.

4 *Gut v. State*, 9 Wall. 35; *Providence Insurance Co. v. Massachusetts*, 6 Wall. 630; *Randall v. Brigham*, 7 Wall. 541.

5 *State v. Sears*, Phil. N. C. 146; *Comm. v. Bean*, Thach. C. C. 85.

6 *State v. Manning*, 14 Tex. 402.

7 *Perry v. Comm.* 3 Gratt. 632.

8 *Walston v. Comm.* 16 B. Mon. 15; *State v. Ryan*, 13 Minn. 370.

9 *Reynolds v. State*, 1 Ga. 222; *Perry v. Comm.* 3 Gratt. 632. But a statute which deprives the accused of the right to object to an incompetent juror is an *ex post facto* law—*Martin v. State*, 22 Tex. 214.

10 *People v. Mortimer*, 46 Cal. 114.

11 *Calder v. Bull*, 3 Dall. 386. And see *De Chastellux v. Fairchild*, 15 Pa. St. 18; *Grome's Appeal*, 16 Ibid. 267; *Bagg's Appeal*, 43 Ibid. 512.

12 *Holt v. State*, 2 Tex. 363; *Dawson v. State*, 6 Tex. 347.

13 *Hartung v. People*, 22 N. Y. 95. But see *Strong v. State*, 1 Blatchf. 193; *Comm. v. Gardner*, 77 Mass. 438.

14 *Evans v. Jordan*, 9 Cranch, 199; 1 Brock, 246; *Evans v. Weiss*, 2 Wash. C. C. 342; *Evans v. Robinson*, 1 Car. Law Rep. 209.

15 *State v. Woodson*, 41 Mo. 227.

16 *White v. Wayne*, Charl. 194.

17 *State v. Bell*, Phil. N. C. 76.

18 *Le Conteux v. Erie Co.* 7 Barb. 249.

Impairing obligations of contract.—The prohibition goes to the power of the State, and not to the manner or character of its action;¹ and the body on which the prohibition rests is the legislative department.² The legislature cannot alter the nature and legal effect of an existing contract, or violate its obligation;³ nor can it change the laws so as to affect the validity of a contract;⁴ whether it relate to real or personal estate, is executed or executory, on parol or under seal, it is preserved inviolate as to its obligations.⁵ The constitution only forbids the impairing of the obligation of contracts, but does not prohibit legislation respecting them.⁶ The inhibition is wholly prospective, and States may legislate as to contracts thereafter to be made.⁷ So, a law prohibiting the making of certain contracts is valid;⁸ and a claim arising out of a tort, and not from a contract, is not within the inhibition.⁹ The term "law" includes a judicial decision as well as a statute.¹⁰ If a contract, when made, is valid, its validity and obligation cannot be impaired by any subsequent legislation, decision, alteration, or construction of the law.¹¹ The prohibition relates solely to contracts between individuals, and not to contracts with the State.¹² If the legislature oversteps its limits and attempts to impair the obligation of contracts, or to pass *ex post facto* laws, the judiciary will set aside its legislation.¹³

1 *Jacoway v. Denton*, 25 Ark. 625.

2 *Trustees v. Rider*, 13 Conn. 87.

3 *King v. Dedham Bank*, 15 Mass. 447.

4 *Walker v. Chapman*, 22 Ala. 116; *May v. Williams*, 27 Ala. 267.

5 *Trustees v. Rider*, 13 Conn. 87; *Taylor v. Stearns*, 18 Gratt. 244; *Farlington v. Tennessee*, 95 U. S. 683.

6 *Thornton v. Hooper*, 14 Cal. 9.

7 *Edwards v. Kearzey*, 96 U. S. 603.

8 *Churchman v. Martin*, 54 Ind. 380.

9 *Dash v. Van Kleeck*, 7 Johns. 477; *Amy v. Smith*, 1 Litt. 326; *Thayer v. Seavey*, 11 Me. 284.

10 *Butz v. Muscatine*, 8 Wall. 575; *Chicago v. Sheldon*, 9 Wall. 50; *City v. Lamson*, *Ibid.* 477; *Township v. Talcott*, 19 Wall. 666.

11 *Ohio L. I. & T. Co. v. Debolt*, 16 How. 416; 1 Ohio St. 563; *Gelpcke v. Dubuque*, 1 Wall. 175; *Havemeyer v. Iowa Co.* 2 Wall. 294; *Thompson v. Lee Co.* 3 Wall. 327; *Mitchell v. Burlington*, 4 Wall. 270; *Lee Co. v. Rogers*, 7 Wall. 181; *City v. Lamson*, 9 Wall. 477; *Chicago v. Sheldon*, 9 Wall. 55; *White v. Hart*, 13 Wall. 647; *Osborn v. Nicholson*, 13 Wall. 655; *Olcott v. Supervisors*, 16 Wall. 678; *Boice v. Tabb*, 18 Wall. 546; *Ill. Cent. R. Co. v. McLean Co.* 17 Ill. 291; *Hunsaker v. Wright*, 30 Ill. 146; *Newstadt v. Ill. Cent. R. R. Co.* 31 Ill. 484. But see *McClure v. Owen*, 26 Iowa, 243.

12 *Myers v. English*, 9 Cal. 341.

13 *McCanley v. Brooks*, 16 Cal. 11.

Obligation of contract.—The obligation of a contract is that which requires the performance of the legal duties imposed by it,¹ and consists of that right or power over his will or actions which a party by his contract confers on another,² and includes everything within its object and scope.³ It does not inhere and consist in the contract itself, but in the law applicable to the contract.⁴ Laws relating to the validity, construction, discharge, and enforcement are part of the contract.⁵ The obligation consists in the binding force on the party who makes the contract, and that depends on the laws in existence when it is made.⁶ It commences at its date,⁷ and continues until the debt is paid or the act performed⁸ extends to future possessions.⁹ The validity, construction, and remedy are parts of the obligation.¹⁰

1 *Blann v. State*, 39 Ala. 353.

2 *Ogden v. Saunders*, 12 Wheat. 213; *Lapsley v. Brashears*, 4 Litt. 47.

3 *Edwards v. Kearzey*, 96 U. S. 601.

4 *Ogden v. Saunders*, 12 Wheat. 353; *Sturges v. Crowninshield*, 4 Wheat. 122; *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 608; *Blair v. Williams*, 4 Litt. 34; *Lapsley v. Brashears*, 4 Litt. 47; *Blanchard v. Russell*, 13 Mass. 1; *Edwards v. Kearzey*, 6 Am. L. R. 289.

5 *Edwards v. Kearzey*, 96 U. S. 601; 6 Am. Law Reg. 289; *Von Hoffman v. Quincy*, 4 Wall. 535; *McCracken v. Hayward*, 2 How. 608.

6 *Sturges v. Crowninshield*, 4 Wheat. 122; *Ogden v. Saunders*, 12 Wheat. 213; *McCracken v. Hayward*, 2 How. 608; *Robinson v. Magee*, 9 Cal. 84; *Johnson v. Duncan*, 3 Mart. 531; *Western Sav. Fund v. Philadelphia*, 31 Pa. St. 175; *Wood v. Wood*, 14 Rich. 148; *Smith v. Cleveland*, 17 Wis. 556.

7 *Blair v. Williams*, 4 Litt. 34.

8 *Baily v. Gentry*, 1 Mo. 164; *Forsyth v. Marbury*, R. M. Charit. 324.

9 *Edwards v. Kearzey*, 96 U. S. 600; 6 Am. Law Reg. 289.

10 *Green v. Biddle*, 8 Wheat. 1; *Ogden v. Saunders*, 12 Wheat. 213; *Bronson v. Kinzie*, 1 How. 311; *McCracken v. Hayward*, 2 How. 608; *Von Hoffman v. Quincy*, 4 Wall. 535; *People v. Bond*, 10 Cal. 570; *Story v. Furman*, 25 N. Y. 223; *Walker v. Whitehead*, 16 Wall. 314.

Impairment of obligation.—To *impair* means to alter so as to make the contract more beneficial to one party and less to the other than by its terms it purports to be.¹ Whatever substantially defeats the end contemplated must impair the obligation of the contract;² so, where a contract is discharged, as authorizing a discharge by a smaller sum, or at a different time, or in a different manner than that stipulated.³ A statute which releases one

party from any article of a stipulation is a violation of the obligation,⁴ as releasing a sheriff and sureties from liability on an official bond;⁵ or a release of sureties on a bail-bond after condition broken;⁶ or the extension of the period of the liability of sureties on a bond.⁷ A statute releasing future acquisitions from liability,⁸ or releasing a tenant from his liability for rent, is void.⁹ The obligation of the contract is impaired where the contract is destroyed,¹⁰ or where an essential part is annulled¹¹ or partially rescinded,¹² as an act authorizing the defendant to surrender the property contracted for in full discharge of his indebtedness.¹³ A statute which declares that a certain consideration shall be deemed void is invalid.¹⁴ Any means which lessens the validity gives diminished value, or which divests priority of lien, obligation, or recovery, violates the obligation,¹⁵ or anything which affects its validity,¹⁶ as where the obligation is diminished, weakened, or rendered less operative;¹⁷ so, where the time, place, person, or thing to be done is changed,¹⁸ as the alteration of the terms of a condition of a mortgage.¹⁹

1 *Bailey v. Gentry*, 1 Mo. 164.

2 *Robinson v. Magee*, 9 Cal. 81.

3 *Golden v. Prince*, 5 Hall L. J. 502; 3 Wash. C. C. 313; *Edmondson v. Ferguson*, 11 Mo. 244.

4 *Jones v. Crittenden*, 1 Car. Law Rep. 285; *Pool v. Young*, 7 Mon. 587; *Townsend v. Townsend, Peck*, (Tenn.) 1; *Greenfield v. Dorris*, 1 Sneed, 548.

5 *State v. Galsweiller*, 49 Mo. 18.

6 *Lewis v. Breckinridge*, 1 Blackf. 220; *Starr v. Robinson*, 1 Chip. 257.

7 *Brown v. Lattimore*, 17 Cal. 93.

8 *Sturges v. Crowninshield*, 4 Wheat. 122.

9 *Clark v. Ticknor*, 49 Mo. 144.

10 *Robinson v. Magee*, 9 Cal. 84.

11 *New Jersey v. Wilson*, 7 Cranch, 164.

12 *Grimball v. Ross, Charlt.* 175.

13 *Abercrombie v. Baxter*, 44 Ga. 36.

14 *McNealy v. Gregory*, 13 Fla. 417.

15 *Grimball v. Ross, Charlt.* 175.

16 *Edwards v. Kearzey*, 96 U. S. 595; *Planters' Bank v. Sharp*, 6 How. 301.

17 *Lapeley v. Brashears*, 4 Litt. 47; *Nevitt v. Bank*, 14 Miss. 512.

18 *Townsend v. Townsend, Peck*, (Tenn.) 1.

19 *Bronson v. Kinzie*, 1 How. 311; *Pool v. Young*, 7 Mon. 587.

Retrospective statutes.—Retrospective statutes impairing vested rights are unconstitutional,¹ if they impair the obligation of contracts.² If they do not violate the obligation of contracts, or partake of the nature of *ex post facto* laws, they are not forbidden.³ An obligation derived from the laws of one State cannot be impaired by the laws of another State; but there is no provision requiring each State in the Union to give the same legal obligation to contracts made in any other State.⁴ Retrospective law, depriving a party of his right to enforce a contract, if taxes have not been paid, is void.⁵ A statute prohibiting the transfer of choses in action, and any action thereon after the transfer, is unconstitutional.⁶ The right to institute ejectment is part of the mortgage contract, and cannot be prohibited by statute;⁷ so, a statute which deprives a person of his right to recover a rent previously paid to the marshal is unconstitutional.⁸ The right of a purchaser to a tax-sale deed cannot be taken away by subsequent legislation.⁹ An act empowering courts and juries to remit interest is void as to prior contracts.¹⁰ But the legislature may change interest laws so far as it relieves from penalties.¹¹ If, when a judgment is rendered, judicial sales are absolute, and before a sale under the judgment takes place a law is passed allowing time for redemption, such law does not impair the obligation of contracts.¹² When the power to repeal is reserved in a charter, the legislature may exercise it without violating the obligation of the contract.¹³ So, where the power is reserved in a general law.¹⁴ Exemption from military duty is not a right, but is revokable at the will of the legislature.¹⁵ So, the repeal of an exemption from jury duty does not violate the obligation of the contract.¹⁶ No express or implied contract exists for the permanence of the salary of a public officer, unless specifically provided in the constitution.¹⁷ A statute cannot take away, by repeal, the right to a penalty.¹⁸ Unless a law is expressly retrospective, courts will not give it a retroactive operation.¹⁹

1 McCloughry v. Lyon, 9 Cowen, 664; Propri. of Kennebec Purch. v. Laboree, 2 Me. 275; Satterlee v. Matthewson, 2 Peters, 380; Sampeyreac v. U. S. 7 Peters, 222.

2 Locke v. New Orleans, 4 Wall. 173; Watson v. Mercer, 8 Peters, 110; Curtis v. Whitney, 13 Wall. 68; Baldwin v. Newark, 38 N. J. 159; Bonaparte v. Camden &c. R. R. Co. Bald. 220.

3 Davis v. Ballard, 1 J. J. Marsh. 563; Brown v. Storm, 4 Vt. 37; Andrews v. Russell, 7 Blackf. 574; Holmes v. Bank, 12 Ala. 369; Baltimore &c. R. R. C. v. Nesbit, 10 How. 401; Wilson v. Hardesty, 1 Md. Ch. 66; Albee v. May, 2 Paine, 74; Bay v. Gage, 36 Barb. 447; Drehman v. Stifle, 41 Mo. 184; Wilder v. Lumpkin, 4 Ga. 209; Boston v. Cummings, 16 Ga. 102; Hepburn v. Curtis, 7 Watts. 300; Journeay v. Gibson, 56 Pa. St. 57.

See *Danner v. Shissler*, 31 *Ibid.* 289; *Juniata Township*, *Ibid.* 301; *Penrose v. Erie Can. Co.* 56 *Ibid.* 46.

4 *Davis v. Pierse*, 7 *Minn.* 13; *McFarland v. Butler*, 8 *Minn.* 116; *Jackson v. Butler*, 8 *Minn.* 117.

5 *Walker v. Whitehead*, 16 *Wall.* 314; 43 *Ga.* 537; *Lathrop v. Brown*, 1 *Woods*, 474; *Griffiths v. Shipp*, 49 *Ga.* 231; *Kimbrow v. Bank*, 49 *Ga.* 419; *Mitchell v. Cothrans*, 49 *Ga.* 125; *Gardner v. Jetter*, 49 *Ga.* 195; *Dougherty v. Fogle*, 50 *Ga.* 464.

6 *Planters' Bank v. Sharp*, 6 *How.* 301; 12 *Miss.* 17; *Jemison v. Planters' Bank*, 23 *Ala.* 168; *Montgomery v. Galbraith*, 19 *Miss.* 555; *McIntyre v. Ingraham*, 35 *Miss.* 25; *Grand Gulf R. R. Co. v. State*, 18 *Miss.* 428. And see *Hyde v. Planters' Bank*, 8 *Rob. (La.)* 416.

7 *Mundy v. Monroe*, 1 *Mich.* 68.

8 *Clark v. Mitchell*, 64 *Mo.* 564.

9 *Bruce v. Schuyler*, 4 *Gilm.* 221.

10 *Roberts v. Cocke*, 28 *Gratt.* 207; *Cecil v. Deyerle*, *Ibid.* 775; *Kent v. Kent*, *Ibid.* 840; *Pretlow v. Bailey*, 29 *Gratt.* 212.

11 *Wood v. Kennedy*, 19 *Ind.* 69.

12 *Moore v. Martin*, 38 *Cal.* 428.

13 *Home of the Friendless v. Rouse*, 8 *Wall.* 430; *Comm. v. Fayette Co. R. R. Co.* 55 *Pa. St.* 452; *Matt. of Powell*, 5 *Mo. Ct. App.* 220.

14 *Tomlinson v. Jessup*, 15 *Wall.* 451.

15 *Daly v. Harris*, 33 *Ga.* 38; *Comm. v. Bird*, 12 *Mass.* 497.

16 *Matt. of Powell*, 5 *Mo. Ct. App.* 220.

17 *Koontz v. Franklin Co.* 76 *Pa. St.* 154.

18 *Dow v. Norris*, 4 *N. H.* 16.

19 *Thames Manuf. Co. v. Lathrop*, 7 *Conn.* 558; *Perkins v. Perkins*, 7 *Conn.* 558; *Bond v. Appleton*, 8 *Mass.* 472.

Municipal obligations.—If a statute authorizing a municipal corporation to issue bonds provides for a tax to pay the same, it is a contract.¹ An act, providing that all indebtedness to the county shall be paid by funding it, does not impair the obligation.² If a fund is pledged for the payment of municipal bonds a subsequent statute cannot authorize its diversion so as to impair the security of the bondholders.³ The provision in a funding act making it the duty of the county authorities to levy a certain rate of taxes annually as a sinking fund, enters into the contract, and cannot be repealed.⁴ An act to fund the debt of Sacramento County, and which forbade the redemption of any warrants which accrued prior to a certain date, was valid.⁵ An act which declares that a demand or claim against the county shall not be legal unless it is presented to and allowed by the Commissioners, is unconstitutional.⁶ An act providing for the levy and collection of a special tax to pay a demand is in all respects *ex gratia*, as an offer to pay on the part of the State, and is void.⁷ A statute cannot compel a party to surrender the

evidence of indebtedness and take another in its place.⁸ And an act which provides for a surrender of the old indebtedness and taking a new security at a different rate of interest is in the nature of a contract ;⁹ but an act making bonds given in exchange for outstanding warrants, to bear interest, is valid.¹⁰ A statute authorizing a municipal corporation to issue bonds does not impair the obligation of a grant of land to individual citizens from the State.¹¹ An act prohibiting the issue of bonds for any other purpose than the one specified is not subject to repeal or amendment.¹² An act providing for the redemption of the bonds at less than par, and authorizing a loan of the fund if no bonds are tendered for redemption, is void.¹³ Bonds issued to a railroad corporation are ever afterwards binding on the body issuing them.¹⁴

1 *Maenbut v. New Orleans*, 2 Woods, 106 ; *Ranger v. New Orleans*, 2 Woods, 123.

2 *Hunsaker v. Borden*, 5 Cal. 288.

3 *People v. Woods*, 7 Cal. 579 ; *People v. Supervisors*, 12 Cal. 300 ; *People v. Bond*, 10 Cal. 563 ; *People v. Tillinghast*, 10 Cal. 584 ; *English v. Supervisors*, 19 Cal. 172 ; *Board v. Fowler*, 19 Cal. 11 ; *Trustees v. Bailey*, 10 Fla. 112 ; *West. Sav. Fund v. Philadelphia*, 31 Pa. St. 175, 185.

4 *English v. Sacramento*, 19 Cal. 172.

5 *McDonald v. Maddux*, 11 Cal. 187.

6 *Rose v. Estudillo*, 39 Cal. 274, citing *McCauley v. Brooks*, 16 Cal. 11 ; *People v. Bond*, 10 Cal. 568.

7 *Sharp v. Contra Costa Co.* 34 Cal. 284.

8 *People v. Morse*, 43 Cal. 535 ; *Rose v. Estudillo*, 39 Cal. 270

9 *People v. Woods*, 7 Cal. 579.

10 *Chapman v. Morris*, 28 Cal. 393.

11 *McCoy v. Washington Co.* 3 Wall. Jr. 281 ; 3 Phila. 290.

12 *Smith v. Appleton*, 19 Wis. 468.

13 *Goldsmith v. Brown*, 45 N. Y. 234.

14 *Lansing v. Muscatine Co.* 2 Abb. U. S. 59 ; *Lee County v. Rogers*, 7 Wall. 181. And see *Butz v. Muscatine*, 8 Wall. 585.

Vested rights.—A right is vested when it has already become a title legal or equitable,¹ and the legislature has no power to divest titles,² or legal or equitable rights previously vested,³ or to vest them in another ;⁴ so, a subsequent statute cannot intervene to divest vested rights in county scrip.⁵ Even if rights have grown up under a law of somewhat ambiguous meaning, the legislature cannot interfere with them,⁶ and though a legislative exposition of a doubtful law may be retroactive, yet it cannot interfere with vested rights ;⁷ but an *ex post facto* law which does not apply to crimes, impair the obligation of contracts, or divest vested rights, is not unconstitutional.⁸

The legislature cannot affect past contracts or alter or destroy the nature of the tenure of estates;⁹ so, an act which positively ignores Mexican grants is unconstitutional.¹⁰ An act which takes from a party that which before was his, as compelling the person ousted from land to pay for improvement put upon the same by a trespasser, is unconstitutional.¹¹ A legislative grant is an executed contract which cannot be impaired by subsequent legislation;¹² and there is no difference in the inviolability of a contract between the grant to an individual and a like grant to a municipal corporation,¹³ although the corporate charter is not a contract within this provision.¹⁴ A power to impose conditions after contract complete and perfect, is but the power to impair its obligation.¹⁵ An act of the legislature divesting the title of the purchaser of property previously mortgaged by his grantor, by a foreclosure suit in which the mortgagor was alone defendant, would not be constitutional.¹⁶ The grant of a ferry, bridge, or road franchise does not carry with it a restriction upon the granting power to make similar grants to other grantees, though the last grant decreases the value of the first.¹⁷ The legislature cannot repeal or alter the provisions of an act so as to affect contracts made during the existence of the act;¹⁸ nor after it passed both houses but before its approval by the governor.¹⁹ A subsequent statute cannot revoke an authority conferred on the government to contract so as to affect contracts already made.²⁰ An act prohibiting a corporation from making transfers allowed by its charter is unconstitutional.²¹ A statute conferring a title and an annuity for services may be repealed without impairing the obligation of the contract;²² so, a pension law, save where the interest had been perfected in the claimant, may be repealed.²³

1 *Richardson v. Akin*, 87 Ill. 133.

2 *Helm v. Webster*, 85 Ill. 116.

3 *Bunn v. Morrison*, 5 Ark. 217; *Grissom v. Hill*, 17 Ark. 490.

4 *Koenig v. Omaha &c. R. R. Co.* 3 Neb. 333.

5 *Laforge v. Magee*, 6 Cal. 650.

6 *McLeod v. Burroughs*, 9 Ga. 213.

7 *McLeod v. Burroughs*, 9 Ga. 213.

8 *New Orleans v. Pontz*, 14 La. An. 853; *New Orleans v. Cordiville*, 13 *Ibid.* 280; *Bay v. Gage*, 36 Barb. 447; *Hinton v. Hinton*, Phill. (N. C.) 410; *Tilton v. Swift*, 40 Iowa, 78; *Lane v. Nelson*, 79 Pa. St. 407.

9 *Dewey v. Lambier*, 7 Cal. 347; *Stafford v. Lick*, 7 Cal. 479.

10 *Lathrop v. Mills*, 19 Cal. 513.

11 *Rich v. Maples*, 23 Cal. 107.

12 *Grogan v. San Francisco*, 18 Cal. 590; *Montgomery v. Kasson*, 16 Cal. 189.

13 *Grogan v. San Francisco*, 18 Cal. 590; *Montgomery v. Kasson*, 16 Cal. 189.

14 *City of Erie v. Erie Can. Co.* 59 Pa. St. 174.

15 *Robinson v. Magee*, 9 Cal. 81.

16 *Skinner v. Buck*, 23 Cal. 253.

17 *Indian Can. R. R. Co. v. Robinson*, 13 Cal. 519; *Shorter v. Smith*, 9 Ga. 517.

18 *Tuolumne Rd. Co. v. Sedgwick*, 15 Cal. 515.

19 *Wartman v. Philadelphia*, 33 Pa. St. 202.

20 *Tenn. & Coosa R. R. Co. v. Moore*, 36 Ala. 371.

21 *Jemison v. Planters & M. Bank*, 23 Ala. 168.

22 *Dale v. Governor*, 3 Stewt. 387.

23 *Chalk v. Darden*, 47 Tex. 438.

Remedies.—The remedy enters into and forms a material part of the obligation of the contract,¹ and a statute can no more impair the efficacy of a contract by changing the remedy than attack its vitality in any other way.² If the legislature so far alter the remedy as to impair, destroy, or render the right scarcely worth pursuing, the obligation is impaired;³ as by burdening the proceedings with new conditions or restrictions,⁴ or by taking away the remedy;⁵ but a State may change or abolish one of two remedies.⁶ So, a mere change of the remedy is not a violation of this provision,⁷ unless it substantially lessens the rights of the parties.⁸ A legislature may alter, modify, or even take away a remedy.⁹ So long as contracts are submitted to the ordinary and regular course of justice, and existing remedies are preserved in substance, the obligation of the contract is not impaired.¹⁰ Statutes of limitations are not unconstitutional if reasonable time be given for the bar to take effect.¹¹ So, exemption laws are valid, unless the exemption is so large as to materially affect the remedy.¹² Laws providing for a stay of execution, so far as they abridge the remedy, impair the obligation of the contract,¹³ if they affect the right;¹⁴ but the legislature may provide for a stay of execution if the stay is not so unreasonable as to substantially impair the obligation.¹⁵ The legislature may change the forms and system of courts and proceedings,¹⁶ the manner of commencing actions, serving notices, and process,¹⁷ but a contract, as a judgment of another State, is impaired by a prohibition to sue thereon.¹⁸ The courts may substitute one surety for costs for another,¹⁹ and a provision to meet debts or engagements may be altered at pleasure.²⁰ A

summary remedy given in a charter is no part of the contract and may be revoked.²¹

1 Walker v. Whitehead, 16 Wall. 314; 43 Ga. 537; Gunn v. Barry, 15 Wall. 610; 8 Bank. Reg. 1; Johnson v. Higgins, 3 Met. (Ky.) 566; Scaine v. Belleville, 10 Vroom, 528.

2 Smith v. Morse, 2 Cal. 524; Johnson v. Duncan, 3 Mart. 531; Coffman v. Bank, 40 Miss. 29; Curran v. Arkansas, 15 How. 304; Butz v. Muscatine, 8 Wall. 583; Walker v. Whitehead, 16 Wall. 314; Olcott v. Supervisors, 16 Wall. 678; Gunn v. Barry, 15 Wall. 623; Edwards v. Kearzey, 96 U. S. 601; Taylor v. Stearns, 18 Gratt. 244; Nevitt v. Bank, 14 Miss. 513; Von Baumbach v. Bade, 9 Wis. 559; Thompson v. Comm. 81 Pa. St. 314.

3 Lapsley v. Brashears, 4 Litt. 27; McCracken v. Hayward, 2 How. 612; Smith v. Morse, 2 Cal. 524.

4 Bronson v. Kinzie, 1 How. 311; McCracken v. Hayward, 2 How. 612; Riggs v. Martin, 5 Ark. 506; Curran v. Arkansas, 15 How. 304; 12 Ark. 321; Mundy v. Monroe, 1 Mich. 68; Commercial Bank v. Chambers, 96 Mass. 9 Penrose v. Reed, 2 Grant, 472; West. Sav. Fund v. Philadelphia, 31 Pa. St. 175; Patman v. Bond, 15 Wis. 20.

5 Woodruff v. Trapnall, 10 How. 190; Richmond R. R. Co. v. Louisville R. R. Co. 13 How. 71; Binghamton Br. Case, 3 Wall. 51; East Hartford v. Hartford Br. Co. 10 How. 535; 17 Conn. 78; Boston &c. R. R. Co. v. Salem &c. R. R. Co. 2 Gray, 1; Piscataqua Br. Co. v. New Haven Br. 7 N. H. 35; Brewster v. Hough, 10 N. H. 138; Johnson v. Duncan, 3 Mart. 531.

6 Butz v. Muscatine, 8 Wall. 575; Von Hoffman v. Quincy, 4 Wall. 535; Society for Prop. Gosp. v. Wheeler, 2 Gall. 141; Gray v. Munroe, 1 McLean, 528; Newton v. Tibbatts, 7 Ark. 150; Fisher v. Lacky, 6 Blackf. 373; Robinson v. Magee, 9 Cal. 81; People v. Carpenter, 46 Barb. 619; Bronson v. Newberry, 2 Doug. (Mich.) 38; Mercer's Case, 4 Harring. 248; Woodfin v. Hooper, 4 Humph. 13; Mundy v. Monroe, 1 Mann. 68; Kennebec Land Co. v. Laboree, 2 Me. 294; Oriental Bank v. Freeze, 18 Me. 109; Call v. Hagger, 8 Mass. 429; Brown v. Dellahunt, 12 Miss. 713; Donnelly v. Corbett, 7 N. Y. 500; Sommers v. Johnson, 4 Vt. 278; Conkey v. Hart, 14 N. Y. 22; Petition of Penniman, 11 R. I. 333; Watts v. Everett, 47 Iowa, 269; Hayward v. Judd, 4 Minn. 483; Mason v. Halle, 12 Wheat. 310; Templeton v. Horne, 82 Ill. 491; Rader v. S. E. Road Dist. 8 Vroom, 273; Baldwin v. Newark, 9 Vroom, 160; Billings v. Riggs, 56 Ill. 483.

7 Oliver v. McClure, 28 Ark. 555; Woods v. Buie, 5 How. (Miss.) 285; Lockett v. Usry, 28 Ga. 345; Read v. Frankfort Bank, 23 Me. 318; Oriental Bank v. Freeze, 18 Me. 109; March v. State, 44 Tex. 64; Lord v. Chadbourne, 42 Me. 429.

8 Bronson v. Kinzie, 1 How. 311; Sturges v. Crowninshield, 4 Wheat. 122; Woodruff v. Trapnall, 10 How. 190; Hawthorne v. Calef, 2 Wall. 10; Walker v. Whitehead, 16 Wall. 314; Green v. Biddle, 8 Wheat. 1; Curran v. Arkansas, 15 How. 319; Roberts v. Cooke, 28 Gratt. 207; Von Hoffman v. Quincy, 4 Wall. 535; Billings v. Riggs, 56 Ill. 483.

9 Von Hoffman v. Quincy, 4 Wall. 535; Crawford v. Branch Bank of Mobile, 7 How. 279; Kenyon v. Stewart, 44 Pa. St. 179; Railroad Co. v. Hecht, 95 U. S. 168; Tennessee v. Sneed, 96 U. S. 60; Florentine v. Barton, 2 Wall. 216; Foster v. Essex Bank, 16 Mass. 245; Rich v. Flanders, 39 N. H. 325; Schenley v. Commonwealth, 36 Pa. St. 57; Hepburn v. Curtis, 7 Watts, 300; Wheat v. State, Minor 199; Anonymous, 3 Stew. 228; Blann v. State, 39 Ala. 353; Guild v. Rogers, 8 Barb. 502; Paschal v. Whitsell, 11 Ala. 472; Bethune v. Dougherty, 30 Ga. 770; Baugher v. Nelson, 9 Gill, 299; Bartlett v. Lang, 2 Ala. 401; Jones v. Davis, 6 Neb. 33; Appeal of Long, 11 Ch. L. N. 43; Stocking v. Hunt, 3 Denio, 274;

Corner v. Miller, 1 Bank. Reg. 99; In re Jordan, 8 Bank. Reg. 186; Bruce v. Schnuyler, 9 Ill. 221; Wood v. Child, 20 Ill. 209; Huntzinger v. Brock, 3 Grant, 243; Read v. Frankfort Bank, 23 Me. 318; Penrose v. Erie Canal Co. 56 Pa. St. 46; Lord v. Chadbourne, 42 Me. 429; Mason v. Wait, 5 Ill. 134; Evans v. Montgomery, 4 Watts & S. 218; provided a substantial remedy is left—Cutts v. Hardee, 38 Ga. 350; Lockett v. Ury, 28 Ga. 345.

10 Holmes v. Lansing, 3 Johns. Cas. 73.

11 Lockhart v. Yeiser, 2 Bush, 231; Barker v. Jackson, 1 Paine, 559; Lewis v. Broadwell, 3 McLean, 568; Christmas v. Russell, 5 Wall. 290; Sohn v. Waterson, 17 Wall. 596; Samples v. Bank, 1 Woods, 523; Terry v. Anderson, 95 U. S. 634; Lewis v. Harbin, 5 B. Mon. 564; Blackford v. Peltier, 1 Blackf. 36; Pearce v. Patton, 7 B. Mon. 162; Stearns v. Gittings, 23 Ill. 387; Newland v. Marsh, 19 Ill. 376; Meek v. Meek, 45 Iowa, 294; Bertrand v. Taylor, 87 Ill. 235; Griffin v. McKenzie, 7 Ga. 163; McKenny v. Compton, 18 Ga. 179; George v. Gardner, 49 Ga. 441; Butler v. Palmer, 1 Hill, 324; State v. Bermudez, 12 La. 352; Cummings v. Maxwell, 45 Me. 190; Beal v. Nason, 14 Me. 344; Sampson v. Sampson, 63 Me. 328; State v. Jones, 21 Md. 432; Smith v. Morrison, 39 Mass. 430; Holcombe v. Tracy, 2 Minn. 241; Stone v. Bennett, 13 Minn. 153; Stephens v. St. Louis National Bank, 43 Mo. 385; Briscoe v. Andetell, 28 Miss. 361; Malby v. Cooper, Morris, 59; Rexford v. Knight, 11 N. Y. 308; Call v. Hagger, 8 Mass. 423; De Cordova v. Galveston, 4 Tex. 470; Bell v. Roberts, 13 Vt. 582; Smith v. Packard, 13 Wis. 371; Miller v. Commonwealth, 5 Watts & S. 488. Instances of reasonable time—Adamson v. Davis, 47 Mo. 268; Adamson v. Wilson, 47 Mo. 273; Adamson v. Marshall, 47 Mo. 273; Coffman v. Bank of Kentucky, 10 Miss. 29; Hill v. Boyland, 10 Miss. 618; Burt v. Williams, 24 Ark. 91; Cox v. Martin, 44 Pa. St. 322; Pereles v. Waterteron, 6 Bliss. 79; Berry v. Ransdall, 4 Met. (Ky.) 292.

12 Edwards v. Kearzey, 96 U. S. 611; Grimes v. Byrne, 2 Minn. 89; Stephenson v. Osborne, 41 Miss. 119; Morse v. Gold, 11 N. Y. 281; Lessley v. Phipps, 49 Miss. 790; Hill v. Kessler, 63 N. C. 436; Jacobs v. Smallwood, Ibid. 112; Cusic v. Douglass, 3 Kans. 23.

13 Bronson v. Kinzie, 1 How. 311; McCracken v. Hayward, 2 How. 608; Granby v. Ewing, 3 How. 707; Howard v. Bugbee, 24 How. 461; Seoby v. Gibson, 1 Am. Law Reg. N. S. 221; Ex parte Pollard, 40 Ala. 77; Burt v. Williams, 24 Ark. 91; Dormire v. Cogly, 8 Blackf. 177; Hudspeth v. Davis, 41 Ala. 389; Garlington v. Priest, 13 Fla. 559; Aycock v. Martin, 37 Ga. 124; Webster v. Rose, 6 Helsk. 94; Strong v. Daniel, 5 Ind. 348; Cargill v. Power, 1 Mich. 369; Coffman v. Bank, 40 Miss. 29; Baily v. Gentry, 1 Mo. 164; Brown v. Ward, 1 Mo. 209; Bumgardner v. Circuit Court, 4 Mo. 50; Grayson v. Lilly, 7 Mon. 6; Stevens v. Andrews, 31 Mo. 205; Townsend v. Townsend, Peck. (Tenn.) 1; State v. Carew, 13 Rich. 498; Sequestration Cases, 30 Tex. 688; Canfield v. Hunter, Ibid. 712; Culbreath v. Hunter, Ibid. 713; Leviathan v. Norris, Ibid. 713; Leviathan v. Krohne, Ibid. 714; Bunn v. Gorgas, 5 Wright, 441; Billmyer v. Evans, 4 Wright, 324. But see McCormick v. Rusch, 3 Am. Law Reg. N. S. 93; Chadwick v. Moore, 8 Watts & S. 49; Breitenbach v. Bush, 8 Wright, 313; Edwards v. Kearzey, 96 U. S. 601, approving Barnes v. Barnes, 8 Jones. (N. C.) 366; Jones v. Crittenden, 1 Car. Law Rep. 385; Jacobs v. Smallwood, 63 N. C. 112.

14 Jones v. Crittenden, 1 Car. L. R. 385; Coriell v. Ham, 4 G. Greene, Iowa, 455; Grosvenor v. Chesley, 48 Me. 369; Swift v. Fletcher, 6 Minn. 550; Johnson v. Duncan, 3 Mart. 531; as postponing the rendition of judgment for at least twelve months—Ex parte Pollard, 40 Ala. 77.

15 Huntzinger v. Brock, 3 Grant, 243.

13 Livingstone v. Moore, 7 Peters, 469; Bald. 424; Rathbone v. Bradford, 1 Ala. 312; Grubbs v. Harris, 1 Bibb, 567; Stoddard v. Smith, 8

Binn. 355; Smith v. Bryan, 34 Ill. 264; Maynes v. Moore, 16 Ind. 116; Hopkins v. Jones, 22 Ind. 310; Webb v. Moore, 25 Ind. 4; Citizens' Bank v. Degnoodt, 25 La. An. 628; Wheat v. State, Minor, 189; Vanzandt v. Waddell, 2 Yerg. 260; Ex parte Pollard, 40 Ala. 77; Woods v. Bine, 5 How. (Miss.) 285; Newkirk v. Chapron, 17 Ill. 344; Lapsley v. Brashears, 4 Litt. 47; Johnson v. Duncan, 3 Mart. 531; Johnson v. Higgins, 3 Met. (Ky.) 466; Morse v. Goold, 11 N. Y. 281; State v. Barringer, Phil. (N. C.) 554; Wood v. Wood, 14 Rich. 148; Hansrick v. Rouse, 17 Ga. 56.

17 Railroad Co. v. Hecht, 95 U. S. 168; McCreary v. State, 27 Ark. 425; New Albany & C. R. Co. v. McNamara, 11 Ind. 543.

18 Scarborough v. Dugan, 10 Cal. 305.

19 Craighead v. State Bank, 1 Meigs, 199.

20 San Francisco v. Beideman, 17 Cal. 443.

21 Ex parte N. E. & S. W. R. R. Co. 37 Ala. 679.

§ 17. Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native-born citizens.

See Ala. I, 36; Ark. II, 20; Colo. II, 27; Fla. Dec. Rts. 18; Iowa, I, 23; Kans. I, 17; Neb. I, 25; Nev. I, 16; Or. I, 32; W. Va. II, 5.

Foreigners.—This section contains no restriction on the power of the legislature to confer the same or other rights on non-resident foreigners.¹ It only removes the common-law disability from aliens who are *bona fide* residents within the State.² This section gives *bona fide* resident aliens certain rights which may be enlarged, but which cannot be abridged by the legislature.³ Each State may regulate the descent of property within its limits, and may permit an alien to inherit lands.⁴

1 Purcell v. Smith, 21 Iowa, 540.

2 Norris v. Hoyt, 18 Cal. 217.

3 State v. Rogers, 13 Cal. 159.

4 Etheridge v. Malempre, 18 Ala. 565; U. S. v. Fox, 94 U. S. 315.

§ 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

Ala. I, 33; Ark. II, 27; Colo. II, 26; Fla. Dec. Rts. 19; Mich. XVIII, 2; Mo. II, 31; Neb. I, 2; Nev. I, 17; N. C. I, 33.

And see Const. U. S. XIIIth Amend.; Ga. I, 4; Ind. I, 37; Iowa, I, 23; Kan. Bill Rts. 6; La. I, 3; Md. Dec. Rts. 24; Miss. I, 19; Ohio, I, 4; Or. XVIII, 4; R. I. I, 4; S. O. I, 2; Tenn. Amend. I, 1; Va. I, 19; Wis. I, 2.

§ 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

See Ala. I, 6; Ark. II, 15; Colo. II, 7; Conn. I, 8; Del. I, 6; Fla. Dec. Rts. 20; Ga. I, 10; Ill. II, 6; Ind. I, 2; Iowa, I, 8; Kan. Bill Rts. 15; Ky. XIII, 2; La. (I), 8; Me. I, 5; Md. Dec. Rts. 26; Mass. Pt. 1st, 14; Mich. VI, 26; Minn. I, 10; Miss. I, 14; Mo. II, 13; Neb. I, 7; Nev. I, 18; N. H. I, 19; N. J. I, 6; N. C. I, 15; Ohio, I, 14; Or. I, 9; Pa. I, 8; R. I. I, 6; S. O. I, 22; Tenn. I, 7; Tex. I, 9; Vt. I, 11; Va. I, 12; West Va. III, 6; Wis. I, 2. And see Const. U. S. IVth Amend.

Search, seizure, and warrants.—The security of personal liberty is such as wisdom and experience demonstrated to be necessary.¹ Provisions for searches and seizures to aid in the collection of revenue are not repugnant to this clause.² A warrant of commitment which does not state some good cause certain, supported by an oath, is illegal;³ but an executive officer can justify his acts by showing a regular warrant, without showing that it was founded on a complaint under oath. It is only necessary that the order or precept shall be lawful on the face of it.⁴ A warrant directing a search in the house of A & Co. will not justify a search in the house of A.⁵ A specification of the character, quality, number, weight, or other circumstances, to distinguish the goods, is necessary.⁶ That no warrant shall issue but upon probable cause has no application to proceedings for the recovery of debts.⁷ A city ordinance in conflict with this provision is void.⁸

1 Ex parte Milligan, 4 Wall. 120.

2 Ex parte Meador, 1 Abb. U. S. 317; Stanwood v. Green, 2 Ibid. 184; Matt. of Platt, 7 Ben. 261; 19 Int. Rev. Rec. 132; U. S. v. Distillery, 4 Ch. L. N. 47; Ex parte Strouse, 1 Sawy. 603.

3 Ex parte Burford, 3 Cranch, 448; Anonymous, 2 Op. Att. Gen. 266.

4 Sanford v. Nichols, 13 Mass. 236.

5 Sanford v. Nichols, 13 Mass. 236.

6 Sanford v. Nichols, 13 Mass. 236.

7 *Ex parte Burford*, 3 Cranch, 448; *Murray v. Hoboken L. & I. Co.* 18 How. 272; *Ex parte Milligan*, 4 Wall. 119; *Wakely v. Hart*, 6 Binn. 316; *Bell v. Clapp*, 10 Johns. 263; *Sally v. Smith*, 11 Johns. 500.

8 *Sullivan v. Oneida City*, 61 Ill. 242.

§ 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

See Ala. I, 19; Ark. II, 14; Colo. II, 9; Conn. IX, 4; Del. V, 3; Fla. Dec. Rts. 21; Ga. I, 25; Ind. I, 28, 29; Iowa, I, 16; Kan. Bill Rts. 13; Ky. VIII, 2; La. (VI) 101; Me. I, 12; Mich. VI, 30; Minn. I, 9; Miss. I, 26; Mo. II, 13; Neb. I, 14; Nev. I, 19; N. J. I, 14; N. C. IV, 5; Or. I, 25; Tex. I, 22; W. Va. II, 26; Wis. I, 10.

And see as to treason against U. S., Const. U. S. III. 3, (1).

§ 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

See Ala. I, 23; Ark. II, 18; Colo. II, 11; Ill. II, 14; Ind. I, 23; Iowa, I, 6; Kan. Bill Rts. 2; Mo. II, 15; Neb. I, 16; N. C. I, 7; Ohio, I, 2; Or. I, 21; Pa. I, 17; Tex. I, 17; Va. I, 20.

§ 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

§ 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Ala. I, 39; Ark. II, 29; Colo. II, 28; Iowa, I, 25; Kan. Bill Rts. 20; La. I, 13; Me. I, 24; Md. Dec. Rts. 45; Miss. I, 32; Mo. II, 32; Neb. I, 26; Nev. I, 20; N. J. I, 19; N. C. I, 37; Ohio, I, 20; Or. I, 34; R. I. I, 23; S. C. I, 41; Va. I, 21.

§ 24. No property qualification shall ever be required for any person to vote or hold office.

See Ala. I, 38; Kan. Bill Rts. 7; La. VI, 121; Minn. I, 17; Miss. I, 18; N. C. I, 22; S. C. I, 32.

ARTICLE II.

RIGHT OF SUFFRAGE.

1. Who are and who are not electors.
2. Privileges of electors.
3. Militia duty, privilege of electors.
4. Residence of voters, gained or lost.
5. Election by ballot.

§ 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State.

NOTE.—The adoption of the XVth Amendment to the Constitution of the United States nullified the restriction implied in the word "white" contained in the old constitution of this State.

"Idiots and insane persons"—See Ala. VII, 3; Ark. III, 5; Ga. II, 6; Ill. VII, 7; Iowa, II, 5; Miss. VII, 2; Neb. VIII, 2; Nev. II, 1; Ohio, V, 6; Or. II, 3; Va. III, 1.

"Conviction for crime"—Ark. III, 6; Ill. VII, 7; Ind. II, 8; Iowa, II, 5; Tenn. IV, 2.

And see Ala. VIII, 1; Ark. III, 1; Colo. VII, 1; Conn. VI, 1-3; Amends. VIII, IX; Del. IV, 1; Fla. XV, 1, 2, 4; Ga. II, 2, 3, 6; Ill. VII, 1; Ind. II, 2; Iowa, II, 1; Kan. V, 1, 2; Ky. II, 8; La. VI, 98, 99; Me. II, 1; Mass. Amend. XIII; Mich. VII, 1; Amend. VII; Minn. VII, 1, 2; Miss. VII, 2; Mo. VIII, 2, 9, 10; Neb. VII, 1; Nev. II, 1; N. H. Pt. II, 27; N. J. II, 1, 2, Amend. 75; N. Y. II, 1; Amend. N. C. VI, 1, 5; Ohio, V, 1, 4; Or. II, 2, 3, 6; Pa. VIII, 1; R. I. II, 1, 2; S. C. VII, 2; Tenn. IV, 1; Tex. VI, 1, 2; Vt. II, 18; Va. III, 1, Amend.; W. Va. IV, 1; Wis. III, 1, 2.

Qualifications of voters.—No constitutional qualification of a voter can be abridged or added to by legislation.¹ The State has the exclusive power to regulate the right of suffrage.²

¹ Page v. Allen, 58 Pa. St. 338; McCafferty v. Guyer, 59 Pa. St. 161; Thompson v. Ewing, 1 Brewst. 103; State v. Adams, 2 Stewt. 239.

² Huber v. Rely, 53 Pa. St. 112.

§ 2. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

See Ala. VIII, 4; Ark. III, 4; Colo. VII, 5; Conn. VI, 8; Del. IV, 2; Ga. II, 7; Ill. VII, 3; Ind. II, 12; Iowa, II, 2; Kan. V, 7; Ky. II, 9; La. 24; Me. II, 2; Mich. VII, 3; Miss. IV, 7; Mo. VIII, 4; Neb. VII, 5; Ohio, V, 3; Or. II, 12; Pa. VIII, 5; S. C. VIII, 6; Tenn. IV, 3; Tex. VI, 5; W. Va. IV, 3.

§ 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

Iowa, II, 3; Me. II, 2; Mich. VII, 4; Neb. VII, 5; Va. III, 5.

§ 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learn-

ing; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

Ala. I, 32; Colo. VII, 4; Ill. VII, 4; Ind. II, 4; Kan. V, 3; Mich. VII, 5; Minn. VII, 3; Miss. VII, 6; Mo. VIII, 7; Neb. VII, 3; Nev. II, 2, 3; N. Y. II, 1, Amend.; Ohio, V, 5; Or. II, 4; Pa. VIII, 6, 13; S. C. VIII, 4; Wis. III, 4.

Residence is that place where the elector makes his permanent or true home, his principal place of business, and his family residence, and where he intends to remain indefinitely.¹ "Resident" means one who has a permanent abode—not one sojourning temporarily for specific purposes.² The mere residence or sojourn of a soldier neither creates nor destroys citizenship, but leaves the political status where it was before;³ and an act of the legislature authorizing United States soldiers to vote elsewhere than where they reside is unconstitutional.⁴

1 Fry's Case, 71 Pa. St. 302.

2 Fry's Case, 71 Pa. St. 302.

3 Ortman v. Riley, 15 Cal. 48.

4 Bourland v. Hildreth, 26 Cal. 162; approved, Day v. Jones, 31 Cal. 261. And see Orman v. Riley, 15 Cal. 48; Opin. of Judges, 30 Conn. 591.

§ 5. All elections by the people shall be by ballot.

Ala. VIII, 3; Ark. III, 3; Colo. VII, 8; Conn. VI, 7; Del. IV, 1; Fla. XIV, 5; Ga. II, 1; Ill. VII, 2; Ind. II, 13; Iowa II, 6; Kans. IV, 1; Ky. VI, 17; La. VI, 107; Me. II, 1; Md. I, 1, 2, 3; Mich. VII, 2; Minn. VII, 6; Miss. VII, 1; Mo. VII, 2; Neb. VII, 6; Nev. II, 5; N. H. Pt. II, 32; N. Y. II, 5; N. C. VI, 3; Ohio V, 2; Pa. VIII, 4; R. I. VIII, 2; S. C. VIII, 1; Tenn. IV, 4; Tex. VI, 4; Vt. XII, 4; Va. III, 2; W. Va. IV, 2; Wis. III, 3.

ARTICLE III.

DISTRIBUTION OF POWERS.

§ 1. The powers of the Government of the State of California shall be divided into three separate departments—the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions ap-

pertaining to either of the others, except as in this Constitution expressly directed or permitted.

Iowa III; Nev. III. See Ala. III; Ark. IV; Colo. III; Conn. II; Fla. IV; Ill. III; Ind. III; Ky. I; Me. III; Mich. III; Minn. III; Miss. III; Mo. III; Neb. II; N. J. III; Or. III; R. I. III; Tenn. II; Tex. II; Va. II; W. Va. V.

Construction.—This article means that the powers of the *State* government, not the local governments thereafter to be created by the legislature, shall be divided into three departments, and that the members of one department shall have no part or lot in the management of the affairs of either of the other departments, "except in the cases hereinafter expressly directed or permitted."¹ Under this article the duties and powers of any department, not by the constitution disposed of or distributed, are left to the disposal of the legislature.² It does not place either department of the State government above the law, nor make either independent of the other.³ The three powers of government shall be distinct, yet the separation is not total.⁴ When a discretion is confided to any one branch of the Government, a decision by that department on such matters cannot be questioned or revised.⁵ There is no power to compel the legislature to make laws.⁶ A grant of power to a department of Government, or to a constitutional or statutory officer or tribunal, without defining the manner and form of its exercise, leaves to the legislature the power to prescribe reasonable rules by which it may be done.⁷ Legislative acts cannot be performed by the judiciary,⁸ nor can the legislature exercise judicial functions,⁹ as prescribing for the issuing of an injunction,¹⁰ or the appointment of a receiver,¹¹ or declaring void certain judgments,¹² or reversing the judgment of the supreme court,¹³ or granting a new trial, and reopening a judgment;¹⁴ but the empowering an administrator to sell lands to pay debts is a legislative and not a judicial power.¹⁵ The legislature cannot authorize municipal authority to collect assessments already declared invalid,¹⁶ nor confer power on boards of supervisors to try a contest in relation to the office of a county judge;¹⁷ but it may direct supervisors to audit and allow the claim of a judgment-creditor; this is not judicial in its character, and is constitutional; for the legislature can as well direct in such a matter as in any other of municipal regulation.¹⁸ It cannot legalize pleadings substantially defective without first requiring them to be amended.¹⁹ Where the power to remit fines and penalties is confided to the executive the legislature cannot act.²⁰

1 *People v. Provines*, 34 Cal. 532, overruling *Burgoyne v. Supervisors of San Francisco*, 5 Cal. 19; *Exline v. Smith*, 5 Cal. 112; *Dickey v. Hurlburt*, 5 Cal. 343; *Thompson v. Williams*, 6 Cal. 88; *Tuolumne Co. v. Stanislaus Co.* 6 Cal. 440; *Phelan v. San Francisco*, 6 Cal. 531; *Sanderson's Case*, 30 Cal. 160.

2 *Ross v. Whitman*, 6 Cal. 361.

3 *McCauley v. Brooks*, 16 Cal. 11.

4 *Beall v. Beall*, 8 Ga. 210.

5 *March v. State*, 44 Tex. 64.

6 *St. Jo. Pub. School v. Patten*, 62 Mo. 444.

7 *Austin v. Gulf &c. R. R. Co.* 45 Tex. 234; *Navigation Co. v. Galveston Co.* 45 Tex. 272.

8 *Galesburg v. Hawkinson*, 75 Ill. 152.

9 *Lane v. Nelson*, 79 Pa. St. 407; *Arick v. Hampton*, 13 Nev. 439; *Carleton v. Goodwin*, 41 Ala. 153; *Alabama &c. Co. v. Boykin*, 38 Ala. 510; *Sanders v. Cabanes*, 43 Ala. 173

10 *Guy v. Hermance*, 5 Cal. 73.

11 *Cary v. Gilles*, 9 Ga. 253.

12 *Weaver v. Lapsley*, 43 Ala. 224.

13 *Matt. of Dorr*, 3 R. I. 299.

14 *People v. Frisbie*, 26 Cal. 137.

15 *Holman v. Bank of Norfolk*, 12 Ala. 333

16 *Mayor &c. v. Horn*, 26 Md. 194.

17 *Stone v. Elkins*, 24 Cal. 125.

18 *O'Donnell v. San Francisco*, 11 Cal. 206.

19 *People v. Mariposa Co.* 31 Cal. 196.

20 *Haley v. Clark*, 26 Ala. 439.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

1. Senate and assembly, and enacting clause.
2. Sessions of legislature.
3. Election and term of assemblymen.
4. Election and term of senators.
5. Number and classes of senators.
6. Senatorial and legislative districts.
7. Organization of legislature.
8. What number constitutes a quorum.
9. Rules for their government—Expulsions.
10. Each house to keep a journal.
11. Privilege of members.
12. Vacancies, how filled.
13. Open doors and secret sessions.
14. Adjournment, how long and where to.
15. Origin and passage of bills.
16. Approval and return of bills—Passage over veto.
17. Impeachments, presentment and trial of.

- § 18. What officers liable to impeachment—Judgment on.
19. Member ineligible to office created during the term.
20. Who ineligible to office under State government—proviso.
21. Embezzlement or defalcation—Penalty for.
22. Public moneys and accounts—Statement of receipts and expenditures.
23. Compensation not to be increased during term.
24. Title of laws—Revision and amendment—Publication of.
25. Local and special laws prohibited.
26. Lotteries prohibited—Purchase and sale of shares of stock to be regulated.
27. Congressional and Senatorial Districts.
28. Elections by legislature to be *viva voce*.
29. General appropriation bill, what to contain.
30. Restriction on appropriations and grants of aid.
31. Credit of State or municipalities not to be loaned.
32. Extra compensation to officers forbidden.
33. Charges of gas and telegraph corporations to be regulated.
34. Special appropriation bill, restriction as to.
35. Lobbying defined—Punishment for.

§ 1. The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated The Legislature of the State of California, and the enacting clause of every law shall be as follows: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

Nev. IV, 1, 23.

And see Ala. IV, 1, 2; Ark. V, 1; Colo. V, 1; Conn. III, 1; Del. II, 1; Fla. V, 1, 13; Ga. III, 1; Ill. IV, 1, 11; Ind. IV, 1; Iowa, III, 1; Kan. II, 1, 20; Ky. II, 1; La. II, 15; Me. IV, 1; Md. III, 1, 23; Mich. IV, 1, 43; Minn. IV, 1, 13; Miss. IV, 1, 32; Mo. I, 24; Neb. III, 1; N. H. Pt. II, 2; N. J. IV, 1, 7; N. Y. III, 1, 14; N. C. II, 1, 21; Ohio, II, 1, 18; Oreg. IV, 1; Pa. II, 1; R. I. IV, 2; S. C. II, 1, 19; Tenn. II, 3, 20; Tex. III, 1, 29; Va. V, 1; W. Va. VI, 1; Wis. IV, 1, 17.

Legislative power.—The legislative department represents the mass of political powers, and is no further controlled as to its powers or mode of their exercise than by the restrictions of the constitution.¹ American legislatures have the same unlimited power as is possessed by the British Parliament,² and nothing is prohibited which is not so either by express terms in the constitutions, or by necessary implication,³ and every subject within the scope of civil government not withdrawn by the State constitution can be dealt with;⁴ but if the boundary of a limited power be overstepped by the legislature its acts are void, and may be inquired into.⁵ Its powers concurrent with the power of the General Government are subject to the single limitation that in case of conflict the State must

yield.⁶ The legislature must look to the object and purpose of the different sections of the constitution relative to the same matter when called on to legislate;⁷ but on the passage of an act it may refer to an act unconstitutional in itself to indicate its will in respect to a constitutional purpose.⁸ The legislature has the power to declare who shall be competent to testify, and the power to regulate the production of evidence,⁹ and the power to require a less amount of proof than is required by the act of Congress in relation to the record of judgments of another State.¹⁰ Congress has no authority to legislate concerning the rules of evidence in State courts, nor to affix conditions upon which those rules are applied and enforced.¹¹ The legislature may regulate the mode of the conveyance of property,¹² or cure defective conveyances,¹³ or make an act changing the law of descent.¹⁴

1 *People v. Coleman*, 4 Cal. 46; *Thorne v. San Francisco*, 4 Cal. 127; *State v. Rogers*, 13 Cal. 159; *Hobart v. Butte Co.* 17 Cal. 23; *Smith v. Judge of Twelfth District*, 17 Cal. 547; *Bourland v. Hildreth*, 26 Cal. 183; *S. & V. R. R. Co. v. Stockton*, 41 Cal. 147; *Philadelphia v. Field*, 58 Pa. St. 320; *Townsend v. New York*, 16 Hun, 362.

2 *Hollenbeck v. Hahn*, 2 Neb. 394.

3 *Lowrey v. Gridley*, 30 Conn. 458.

4 *Munn v. Illinois*, 69 Ill. 80.

5 *Cronise v. Cronise*, 54 Pa. St. 255.

6 *State v. Ashley*, 1 Ark. 513.

7 *Wright v. Adams*, 45 Tex. 134.

8 *People v. Bircham*, 12 Cal. 50.

9 *People v. Brady*, 40 Cal. 198; *People v. Washington*, 36 Cal. 633.

10 *Whitwell v. Barbier*, 7 Cal. 54.

11 *Duffy v. Hobson*, 40 Cal. 240.

12 *Warfield v. Ravistas*, 38 Ala. 518.

13 *Barnet v. Barnet*, 15 Serg. & R. 72.

14 *Beall v. Beall*, 8 Ga. 210.

Instances.—The power to prescribe police regulations is in the legislature, and is inalienable even by express grant.¹ States have exclusive rights of property over tide-waters within their limits,² and the right to control fisheries.³ Merely official positions, unprotected by specific constitutional provisions, are subject to the exercise of the power of the legislature;⁴ and the legislature may change the mode of appointment to offices of its creation.⁵ The legislature may authorize persons to have free access to public records.⁶ It may authorize a guardian to sell the real estate of his ward,⁷ or may pass an act validating the sale of orphans' property, but it cannot validate judicial proceedings void for want of jurisdiction,⁸ nor by

special act empower another than the guardian of a minor's estate to sell the same,⁹ but may ratify a void transfer made by a railroad.¹⁰ The legislature may require all pleadings to be sworn to, or may regulate what shall be presumptive evidence in civil cases,¹¹ or may authorize the dismissal of an appeal when the appellant has escaped.¹² It may regulate the practice of medicine,¹³ or may encourage the rearing of sheep and discourage keeping dogs, and couple the provisions with a penalty.¹⁴ The legislature may make railroads liable for injury to live stock,¹⁵ or may authorize the use of a street of a city for railroad purposes,¹⁶ or may regulate the speed of railroad trains in cities.¹⁷ The legislature may exempt from liability for acts done under military authority,¹⁸ or may pay bounties to veteran soldiers.¹⁹ It may impose a penalty to compel a strict observance of a statute requirement.²⁰ It may provide for punishment for counterfeiting,²¹ or authorize the transfer of convicts to private individuals, and may lease the labor of future convicts.²²

1 Thorp v. Rutland &c. R. R. Co. 1 Williams, (Vt.) 140.

2 Duval v. McLoskey, 1 Ala. 708; Kemp v. Thorpe, 3 Ala. 291; Pollard v. Files, 3 Ala. 47; Pollard v. Hagan, 3 How. 212; Mayor &c. v. Es-lava, 9 Port. 577; and authorize the construction of wharves on navigable rivers—State v. Green, 4 Ga. 26.

3 Gentile v. State, 29 Ind. 409; State v. Hockett, Ibid. 302.

4 Kilgore v. Magee, 85 Pa. St. 401.

5 Davis v. State, 7 Md. 151.

6 Silver v. People, 45 Ill. 224.

7 Ward v. New England &c. Co. 1 Cliff. 565; Brenham v. Davidson, 51 Cal. 352.

8 Lane v. Nelson, 79 Pa. St. 407; nor authorize an executor to make investment in Confederate bonds—Houston v. Deloach, 43 Ala. 364; Powell v. Boon, Ibid. 459, overruling Watson v. Stone, 40 Ala. 451.

9 Lincoln v. Alexander, 52 Cal. 482.

10 Hatcher v. Toledo &c. R. R. Co. 62 Ill. 477.

11 Honore v. Home Nat. Bank, 80 Ill. 489; Hand v. Ballou, 2 Kern. 41.

12 Brown v. State, 5 Tex. Ct. App. 126.

13 Logan v. State, 5 Tex. Ct. App. 306.

14 Mitchell v. Williams, 27 Ind. 62.

15 Davis v. Central Railroad, 17 Ga. 323.

16 Clinton v. Cedar Rapids, 24 Iowa, 455; Carson v. Central R. R. Co., 25 Cal. 325.

17 Chicago &c. R. R. Co. v. Reidy, 66 Ill. 43; Chicago &c. R. R. Co. v. Haggerty, 67 Ill. 113.

18 Clark v. Dick, 1 Dill 8.

19 Washington Co. v. Berwick, 56 Pa. St. 466.

20 Chicago &c. R. R. Co. v. Reidy, 66 Ill. 43.

21 *People v. White*, 34 Cal. 705.

22 *State v. McCauley*, 15 Cal. 429.

Restriction on legislative powers.—The power of enacting general laws cannot be delegated to the people;¹ it cannot delegate any of its powers unless authorized to do so by the constitution.² It is to judge of the expediency of a law, and cannot refer the same to be decided by a popular vote.³ It cannot divest itself or a succeeding legislature of any power necessary to the well-being of the State,⁴ and a release of the right to tax in a grant of a charter, since the amendment to the constitution, would not bind a succeeding legislature.⁵ One legislature cannot be bound by the acts of another;⁶ and every legislative body may modify or abolish the acts of its predecessor, and no act is irrevocable except it be in the form of a contract.⁷ The legislature has no power to interpret existing laws which do not apply to its own duties;⁸ nor can it legalize an act which it could not have authorized to be done;⁹ so, to cure a defective proceeding, it must have had the power to pass the original act authorizing the proceeding.¹⁰ It cannot exercise judicial powers,¹¹ as authorizing city authorities to collect an assessment already declared invalid;¹² nor compel a city to pay a claim against it which it is under no obligation, moral or equitable, to pay, nor require a court to render judgment on proof of its amount;¹³ nor can it confer jurisdiction upon the Federal courts or prescribe the means or mode of its exercise;¹⁴ nor can it authorize school land commissioners to treat as rescinded purchases of school sections, and to sue and receive possession of such lands.¹⁵ The legislature has no power to change official titles as given in the constitution.¹⁶

1 *People v. Collins*, 3 Mich. 343; *State v. Copeland*, 3 R. I. 33.

2 *Willis v. Owen*, 43 Tex. 41.

3 *Ex parte Wall*, 48 Cal. 279.

4 *Daly v. Harris*, 33 Ga. 38.

5 *Jones & N. Manuf. Co. v. Comm.* 69 Pa. St. 137.

6 *Brightman v. Kirner*, 22 Wis. 54.

7 *Bloomer v. Stolley*, 5 McLean, 158.

8 *Tilford v. Ramsey*, 43 Mo. 410.

9 *City of Hastings v. Thorne*, 8 Neb. 163; *May v. Holdridge*, 23 Wis. 93; *Hepburn v. Curtis*, 7 Watts, 300.

10 *State v. Squires*, 26 Iowa, 340.

- 11 *Beal v. Beall*, 8 Ga. 210.
- 12 *Mayor &c. v. Horn*, 26 Md. 194; *Matter of Dorr*, 3 R. I. 299.
- 13 *Hoagland v. Sacramento*, 52 Cal. 150; *Hasbrouck v. Milwaukee*, 13 Wis. 37.
- 14 *Greely v. Townsend*, 25 Cal. 613.
- 15 *Hardy v. Branch Bank of Montgomery*, 15 Ala. 722.
- 16 *Delitz v. City of Central*, 1 Colo. 323.

Local option laws.—An act may take effect on a future contingency, and that contingency¹ may arise from the voluntary act of others.² It may provide that it go into effect at one time or another, absolutely or conditionally.³ A local law may be made to depend on the will of the voters,⁴ and an act to take effect on counting of the popular vote is not a delegation of legislative power,⁵ as the submission of an incorporation act of a city to the vote of the people,⁶ or the power to the voters of a county to select the county seat.⁷ That a legislative act depends on the popular vote for its operation does not render it unconstitutional.⁸ The provision that it be submitted to a vote of the people is an essential part of the law, and if void it vitiates the whole.⁹ Where a law submits the division of a county to the vote of the people it is constitutional.¹⁰ Where a city was authorized by its charter to issue its bonds, but the charter was silent as to the mode of the exercise of the power, a vote had under an ordinance duly passed prior to the adoption of the new constitution must be regarded as had in pursuance of law.¹¹ The power to make laws cannot be conferred by the legislature on the people, or on any portion of them.¹²

1 *Blanding v. Barr*, 13 Cal. 343; *Hobart v. Butte Co.* 17 Cal. 23; *Savings & L. Socl. v. Austin*, 46 Cal. 477; *Ex parte Wall*, 46 Cal. 279.

2 *Guild v. Chicago*, 82 Ill. 472.

3 *Hobart v. Supervisors*, 17 Cal. 23.

4 *Hobart v. Supervisors*, 17 Cal. 23; *Lammert v. Lidwell*, 62 Mo. 188; *Sandford v. Ct. Com. Pl. of Morris*, 36 N. J. 72; *Gloversdale v. Howell*, 70 N. Y. 287; *State v. Beneke*, 9 Iowa, 203.

5 *Robinson v. Bidwell*, 22 Cal. 379.

6 *Smith v. McCarthy*, 56 Pa. St. 359.

7 *Upham v. Supervisors*, 8 Cal. 378. And see *Ex parte Shrader*, 33 Cal. 279.

8 *Louisville &c. R. R. Co. v. Davidson*, 1 Sneed, 637.

9 *Meshmeier v. State*, 11 Ind. 482.

10 *State v. Elwood*, 11 Wis. 17.

11 *Mason v. Shawneetown*, 77 Ill. 533.

12 *Ex parte Wall*, 46 Cal. 279; *Houghton v. Austin*, 47 Cal. 646.

Validity of statutes.—That a law has been enacted affords little presumption that it is constitutional.¹ Courts may go behind the statute and have recourse to the legislative journals,² and may receive other evidence than the record³ to prove the passage of a bill,⁴ and a mere clerical error in the journal will not vitiate the statute.⁵ Courts will not disregard an act because the journal of one or both houses fails to show its passage in strict compliance with all the directions of the constitution, it being in other respects perfect and unobjectionable;⁶ and when a law is signed by the speakers of both houses, and approved by the governor, it is presumed to have been passed in conformity to constitutional requirements.⁷ But courts cannot go behind the record to inquire into the regularity of the proceedings on the passage of a bill.⁸ The constitutionality of a law is a bare question of power—motives cannot be inquired into;⁹ so, improper motives and designs are not to be imputed.¹⁰ Courts cannot declare a law unconstitutional as being against the spirit of the constitution,¹¹ nor have they anything to do with the wisdom or sound policy of an act.¹² They cannot declare an act void, however unjust or impolitic it may be,¹³ or however unnecessarily severe¹⁴ or contrary to the principles of natural justice,¹⁵ if within the scope of legislative power, unless it is clearly subversive of the constitution,¹⁶ and does not affect vested rights.¹⁷ Whether as contrary to natural right, or the principles of civil liberty, query.¹⁸ The legislature may pass all laws it deems essential to the public welfare, and it is the arbiter of the policy of its laws, which courts cannot restrain.¹⁹ Although an act is unconstitutional and void, it will estop one who accepts it, and is notice to third persons.²⁰

1 *Sadler v. Langham*, 34 Ala. 311.

2 *Jones v. Hutchinson*, 43 Ala. 721; *Burr v. Ross*, 19 Ark. 260; *Supervisors v. Heenan*, 2 Minn. 330; *Gormley v. Taylor*, 44 Ga. 76; *Turley v. Logan Co.* 17 Ill. 151.

3 *Fowler v. Pierce*, 2 Cal. 165.

4 *Larrison v. Peoria &c. Co.* 77 Ill. 11.

5 *Supervisors v. Heenan*, 2 Minn. 330.

6 *Blessing v. Galveston*, 43 Tex. 641.

7 *Larrison v. Peoria &c. Co.* 77 Ill. 11.

8 *People v. Devlin*, 33 N. Y. 269.

9 *Ex parte Newman*, 9 Cal. 502.

10 *Baltimore v. State*, 15 Md. 376.

11 *Patterson v. Yuba Co.* 13 Cal. 182; *Stockton &c. R. R. Co. v. Stockton*, 41 Cal. 162.

12 *Winter v. Jones*, 10 Ga. 190. And see *Trustees of Bishop's Fund v. Rider*, 13 Conn. 104.

13 *County Court v. Griswold*, 58 Mo. 175.

14 *Sears v. Cottrell*, 5 Me. 251; *Hallenbeck v. Hahn*, 2 Neb. 396; *Chance v. Marion Co.* 64 Ill. 66.

15 *Calder v. Bull*, 3 Dall. 399; *Macon &c. R. R. Co. v. Little*, 45 Ga. 370.

16 *Chance v. Marion Co.* 64 Ill. 66; *Sears v. Cottrell*, 5 Me. 251; *Court of St. Louis Co. v. Griswold*, 58 Mo. 175; *Hallenbeck v. Hahn*, 2 Neb. 396; *Turner v. Althaus*, 6 Neb. 54; *Stockton & V. R. R. Co. v. Stockton*, 41 Cal. 160; *People v. Burbank*, 12 Cal. 384; *Smith v. Judge of Twelfth Dist.* 17 Cal. 551; *Santo v. Iowa*, 2 Iowa, 208; *Pennsylvania R. R. Co. v. Riblet*, 66 Pa. St. 164; *Squares v. Campbell*, 41 How. Pr. 193; *Macon &c. R. R. Co. v. Little*, 45 Ga. 370.

17 *Trustees of Bishop's Fund v. Rider*, 13 Conn. 104.

18 *State v. Wheeler*, 25 Conn. 297.

19 *Walker v. Whitehead*, 43 Ga. 538. And see *Beall v. Beall*, 8 Ga. 210.

20 *Robinson v. Bank of Darien*, 18 Ga. 65.

Statute in part invalid.—A statute may be in part valid and in part invalid,¹ and it may take effect as to the part which is constitutional;² and a section may be considered stricken out and not vitiate the portions which are constitutional.³ A provision conceded to be unconstitutional would not destroy the whole law.⁴ That part only is void, unless so connected that it cannot be presumed the legislature would have passed the one part without the other.⁵ So, the whole act would not be void if the provisions not unconstitutional are complete in themselves,⁶ or if they are entirely independent of each other,⁷ or if the unconstitutional provision is not necessary for the maintenance of the whole;⁸ and if the provisions of the act are divisible,⁹ but not if incapable of separation,¹⁰ or if the nature of the unconstitutional part is such as to render it of vital importance to the whole,¹¹ or if it enter entirely into the scope and design of the law, and it is impossible to maintain it without the obnoxious provision,¹² or where it is clear that either clause could not have been enacted without the other,¹³ or where the void provisions have such a connection as to be essential to the law—the whole is void.¹⁴ So, the whole act is void, where the void provisions were evidently designed as inducements to the valid provisions;¹⁵ for where a provision is unconstitutional, another dependent on it falls with it.¹⁶ So, the whole act is void where only one object is aimed at, and all the void provisions are contributory to it.¹⁷

1 *Duer v. Small*, 4 Blatchf. 263; *Mobile &c. R. R. Co. v. State*, 29 Ala. 573; *Ex parte Pollard*, 40 Ala. 77; *People v. Hill*, 7 Cal. 104; *People v. Burbank*, 12 Cal. 393; *Lathrop v. Mills*, 19 Cal. 513; *Robinson v. Bidwell*, 22 Cal. 397; *Mills v. Sargent*, 36 Cal. 379; *Rood v. McCarger*, 49 Cal. 117; *McClosky v. Chamberlin*, 37 N. J. 388; *Mauch Chunk v. McGee*, 81 Pa. St. 433; *State v. Copeland*, 3 R. I. 33; *State v. Snow*, 3 R. I. 64; *Allegheny County Home*, 77 Pa. St. 77; *State v. Wheeler*, 25 Conn. 299.

2 *Mills v. Sargent*, 36 Cal. 379; *Kennedy v. Milwaukee &c. R. R. Co.* 22 Wis. 581; *Nelson v. People*, 33 Ill. 390; *McCulloch v. State*, 11 Ind. 424; *Santo v. State*, 2 Clarke, (Iowa) 165.

3 *Mobile &c. R. R. Co. v. State*, 29 Ala. 573; *French v. Teschemaker*, 24 Cal. 545; *Robinson v. Bidwell*, 22 Cal. 379; *Lathrop v. Mills*, 19 Cal. 513; *Nelson v. People*, 33 Ill. 390.

4 *Wakely v. Mohr*, 15 Wis. 609.

5 *Comm. v. Clapp*, 5 Gray, 97; *Comm. v. Hitchings*, Ibid. 482; *Comm. v. Pomeroy*, Ibid. 486, note.

6 *Knox Co. v. Davis*, 63 Ill. 405; *Myers v. People*, 67 Ill. 503.

7 *State v. Perry Co.* 5 Ohio St. 497; *Lathrop v. Mills*, 19 Cal. 513; *Davis v. Minge*, 56 Ala. 121; *Mobile &c. R. R. Co. v. State*, 29 Ala. 584; *Warren v. Mayor &c.* 2 Gray, 99; *Jones v. Robbins*, 8 Gray, 338.

8 *People v. Hill*, 7 Cal. 97.

9 *Slauson v. Racine*, 13 Wis. 396.

10 *Davis v. Minge*, 56 Ala. 121; *Mobile &c. R. R. Co. v. State*, 29 Ala. 584; *State v. Perry Co.* 5 Ohio St. 506; *Warren v. Mayor &c.* 2 Gray, 99; *Jones v. Robbins*, 8 Gray, 338; *Campan v. Detroit*, 14 Mich. 276.

11 *People v. Mahaney*, 13 Mich. 481.

12 *Read v. Omnibus R. R. Co.* 33 Cal. 212.

13 *S. F. v. S. V. W. W.* 48 Cal. 493.

14 *Robinson v. Bidwell*, 22 Cal. 379.

15 *Slauson v. Racine*, 13 Wis. 396.

16 *Quinlon v. Rogers*, 12 Mich. 168.

17 *Darby v. Wilmington*, 76 N. C. 133.

Statutory construction.—Statutes should be construed with reference to the habits of business prevalent among the people to whom they apply¹—such a construction as will tend most to make them accomplish their different objects.² They should be construed so as to give them operation, if the language will permit, instead of treating them as meaningless.³ Useful and honest legislation should not be defeated by a too rigid adherence to the letter of the constitution;⁴ and when the intent is discovered it ought to be followed with reason and discretion, although such may seem contrary to the letter.⁵ It is the duty of the court to reconcile different parts of the law.⁶ When an act can be so construed and applied as to avoid a conflict with the constitution and give it the force of law, such a construction will be adopted,⁷ as by a change of a disjunctive for a conjunctive conjunction;⁸ and when the language is susceptible of two constructions, the one in accord with and the other in violation of the constitution, it will be presumed that the legislature intended to use the language in a sense consistent with the constitution.⁹ General words are to be restricted

where it is clear that they were not intended to extend to a particular act or thing.¹⁰ Special or specific provisions control general provisions.¹¹ Where a provision contains negative terms, express or implied, such negative shows an intent to impose a limitation, and the statute becomes imperative.¹² Provisions are mandatory where compliance is essential to the validity of the act, or when some antecedent and prerequisite conditions exist, or where performance is required before certain other powers can be exercised.¹³ Though language is simply enabling, yet if it conveys a power which concerns the public as well as individuals, it is mandatory.¹⁴ Provisions are directory where they relate to immaterial matter, or where they are given with a view to a proper, orderly, or prompt conduct of business merely.¹⁵ Statutes in contravention of the common law are not to be extended by construction,¹⁶ as it is not to be presumed that the legislature intended to make an innovation on the common law further than the case absolutely requires.¹⁷

1 *Higgins v. Rinker*, 47 Tex. 393.

2 *Welton v. Missouri*, 91 U. S. 275; *Higgins v. Rinker*, 47 Tex. 393.

3 *Howard Asso. Appeal*, 70 Pa. St. 344.

4 *Mauch Chunk v. McGee*, 81 Pa. St. 433.

5 *Smiley v. Sampson*, 1 Neb. 87.

6 *Mauch Chunk v. McGee*, 81 Pa. St. 433.

7 *State v. Pool*, 74 N. C. 402; *Newland v. Marsh*, 19 Ill. 384.

8 *State v. Pool*, 74 N. C. 402; *Parker v. Carrow*, 64 N. C. 563.

9 *Galveston & Co. v. Gross*, 47 Tex. 423. And see *Burt v. Rattle*, 31 Ohio St. 118.

10 *Smiley v. Sampson*, 1 Neb. 87.

11 *People v. Gosper*, 3 Neb. 310; *Felt v. Felt*, 19 Wis. 193; *McCann v. McLennan*, 2 Neb. 283; *City of Covington v. McNickle*, 18 B. Mon. 280; *Peyton v. Mosely*, 3 Mon. 77; *M. & E. R. Co. v. Comm'rs of Taxation*, 8 Vroom, 415.

12 *People v. Schermerhorn*, 19 Barb. 358; *Hurford v. Omaha*, 4 Neb. 350.

13 *Hurford v. Omaha*, 4 Neb. 350.

14 *Inhab. of V. v. Inhab. of C.* 50 Mo. 528; *People v. Supervisors*, 11 Abb. Pr. 114.

15 *Hurford v. Omaha*, 4 Neb. 350.

16 *Brown v. Fifield*, 4 Mich. 322.

17 *Johnson v. Hahn*, 4 Neb. 144.

Effect of repeal.—A general statute without negative words will not repeal a previous statute which is special, although its provisions be different.¹ A repealing clause in an unconstitutional statute is inoperative.² The effect of a repealing clause is to end all proceedings, unless under an exception.³ The law does not favor a repeal by implication,⁴ yet, though a repeal by implication is not favored, when the inconsistency is clear the first statute is held repealed.⁵ In the construction of statutes the earliest remains in force unless the two are clearly inconsistent and repugnant,⁶ in so far as it is repugnant.⁷ The rights of a citizen on a pending suit founded solely on statute is terminated by repeal unless there be a saving clause in the repealing act.⁸

1 *Rounds v. Waymart Borough*, 81 Pa. St. 395.

2 *Tims v. State*, 26 Ala. 165; *Mesmeier v. State*, 11 Ind. 432; *State v. La Crose*, 11 Wis. 51.

3 *Copeland v. Village of Passaic*, 7 Vroom, 382.

4 *People v. Webster*, 3 Neb. 323.

5 *Golding v. College of Chambersburg*, 8 Vroom, 258.

6 *White v. City of Lincoln*, 5 Neb. 505; *People v. Weston*, 3 Neb. 323.

7 *Case of Barber*, 86 Pa. St. 392.

8 *Bennet v. Hargus*, 1 Neb. 421.

Judicial interpretation.—The constitution is a law, and the judiciary, from the very nature of the powers given it, must interpret it.¹ Courts may declare the action of the legislature unconstitutional when such action violates the supreme law, but they cannot avoid the effects of non-action.² The construction of the constitution and statutes of one State, given them by the highest judicial tribunal thereof, is to be followed by the courts of other States.³ Courts have a right to decide on the validity of statutes of other States.⁴ If an act be manifestly a breach of the constitution, it is the duty of the court to declare it void.⁵ City ordinances in conflict with the constitution or statutes are invalid.⁶

1 *Nongues v. Douglass*, 7 Cal. 65.

2 *Myers v. English*, 9 Cal. 341.

3 *Franklin v. Twogood*, 25 Iowa, 520.

4 *Stoddart v. Smith*, 5 Binn. 355.

5 *Eakin v. Raub*, 12 Serg. & R. 330.

6 *Mayor &c. v. Hussey*, 21 Ga. 80.

Police powers of States.—Private interests must be made subservient to the general interest of the community,¹ so the power of States over police regulations is supreme.² A State law intended as a regulation of police is not a regulation of commerce,³ but the police power cannot be extended over interstate transportation of the subjects of commerce.⁴ A State may regulate the position of vessels in her harbors or rivers,⁵ or may regulate the speed of steamers or railroad trains.⁶ States may prohibit the introduction of slaves,⁷ or exclude paupers, criminals, diseased or infirm persons, and persons afflicted with contagious diseases,⁸ and may exact a bond to indemnify from expense of maintaining passengers after arrival,⁹ but to exclude passengers who are in possession of their faculties, and neither paupers nor criminals, is a regulation of commerce which the State cannot exercise.¹⁰ So, a State cannot legislate to prevent the importation of cattle during certain seasons of the year, this being more than an exercise of its police powers;¹¹ but it may regulate the introduction of game during certain months;¹² but forbidding the exportation of game, lawfully killed within the State, is unconstitutional.¹³ A State may forbid the sale of an illuminating liquid below a certain standard,¹⁴ or regulate the use of explosives and dangerous oils and substances,¹⁵ or may remove the same.¹⁶ The police power extends to the protection of the lives, limbs, health, comfort, morals, and quiet of all persons, and the protection of all property in the State.¹⁷ This clause does not interfere with the rights of States to enact inspection, quarantine, and health laws, as well as laws regulating internal commerce,¹⁸ or commerce local in its character,¹⁹ as requiring the master of a vessel to report the names, ages, and origin of passengers.²⁰ Inspection laws are not burdens on trade, nor unjust discriminations, so long as they are reasonable;²¹ but a statute requiring vessels to furnish statements of the name and owner is void as to United States vessels.²² So, a statute relating to the survey of sea-going vessels is a regulation of commerce, and void.²³

1 *Slaughter House Cases*, 16 Wall. 62; *Commonwealth v. Alger*, 7 Cush. 84; *Taunton v. Taylor*, 116 Mass. 254; *Watertown v. Mayo*, 109 Mass. 315.

2 *Slaughter House Cases*, 16 Wall. 62; *Bartemeyer v. Iowa*, 18 Wall. 138.

3 *Smith v. Maryland*, 18 How. 71; *New York v. Miln*, 11 Peters, 102.

4 *Railroad Co. v. Husen*, 95 U. S. 465. *Contra*, *Yeazel v. Alexander*, 58 Ill. 254.

5 *Vanderbilt v. Adams*, 7 Cowen, 348.

- 6 *People v. Jenkins*, 1 Hill, 469; *Toledo &c. Co. v. Deacon*, 63 Ill. 91.
- 7 *Groves v. Slaughter*, 15 Peters, 449; *Osborn v. Nicholson*, 1 Dill. 235.
- 8 *Passenger Cases*, 7 How. 283; *Moore v. Illinois*, 14 How. 13; *State v. S. S. Constitution*, 42 Cal. 578; *Lemmon v. People*, 20 N. Y. 607; 26 Barb. 270.
- 9 *Candler v. Mayor of New York*, 1 Wend. 493; *State v. S. S. Constitution*, 42 Cal. 578; *Henderson v. The Mayor*, 92 U. S. 265; *Passenger Cases*, 7 How. 572. But see *New York v. Staples*, 6 Cowen, 170.
- 10 *State v. S. S. Constitution*, 42 Cal. 578.
- 11 *Railroad Co. v. Husen*, 95 U. S. 465; *S. O. 6 Am. L. R. 265*, denying *Yeazel v. Alexander*, 53 Ill. 254; *Stevens v. Brown*, *Ibid.* 289; *Wilson v. Kansas C. St. J. & C. R. R.* 60 Mo. 184; *Husen v. Hannibal & St. J. R. R. Co.* 60 Mo. 226; *Mercer v. Kansas C. St. J. & C. R. R. Co.* 60 Mo. 397; *Chicago &c. R. R. Co. v. Gassaway*, 71 Ill. 570; *Somerville v. Marks*, 54 Ill. 371.
- 12 *State v. Randolph*, 1 Mo. App. 15.
- 13 *State v. Saunders*, 19 Kan. 127.
- 14 *Patterson v. Kentucky*, 11 Ch. L. N. 183; 7 Am. L. R. 63.
- 15 *Slaughter-House Cases*, 16 Wall. 36; *U. S. v. Dewitt*, 9 Wall. 41.
- 16 *Holmes v. Jennison*, 14 Peters, 617.
- 17 *Munn v. Illinois*, 94 U. S. 147; *Toledo &c. Co. v. Jacksonville*, 67 Ill. 37; *Ex parte Shrader*, 33 Cal. 279; *Davis v. Central R. R. Co.* 17 Ga. 323.
- 18 *Gibbons v. Ogden*, 9 Wheat. 1; *New York v. Miln*, 11 Peters, 102; *Conway v. Taylor*, 1 Black, 633; *State v. Fosdick*, 21 La. An. 255.
- 19 *State v. S. S. Constitution*, 42 Cal. 578.
- 20 *New York v. Miln*, 11 Peters, 131.
- 21 *People v. Harper*, 11 Ch. L. N. 191.
- 22 *Sinnot v. Davenport*, 22 How. 227; *Foster v. Davenport*, 22 How.
244. *Contra*, *Commrs. of Pilotage v. The Cuba*, 28 Ala. 185.
- 23 *Foster v. Master &c. of N. O.* 94 U. S. 246.

Police powers.—It is the province of the legislature to determine the exigency calling for the exercise of police powers, and of the courts to decide the proper subjects of its exercise,¹ and it cannot by any contract divest itself of this power,² nor of its discretion in its exercise.³ The police powers comprehend all those general laws of internal regulation necessary to secure peace, good order, health, and the comfort of society,⁴ private interests being subservient to the general interests of the community.⁵ The legislature may forbid an individual from undertaking a dangerous employment except at his own risk,⁶ or it may prohibit a hazardous or pernicious business, although it affects prior contracts.⁷ So, it may regulate the sale of naphtha or inflammable oils.⁸ A subsequent statute may prohibit the transportation of dead animals under a charter allowing their use as fertilizers.⁹ So, a statute prohibiting a lottery is valid, though the charter gave a right to establish one.¹⁰ A State legislature may pass laws regulating the observance of the Sabbath,¹¹ or may

give a remedy against nuisances.¹² Every citizen holds his land subservient to such police regulation as the legislature in its wisdom may enact for the general welfare.¹³ The State may regulate the carrying on of business within its limits.¹⁴ So, State laws may impose reasonable police regulations for the protection of markets against the sale of commodities unfit for commerce,¹⁵ or may regulate the sale of any commodity the use of which would be detrimental to the morals of the people.¹⁶ The legislature may regulate the sale of spirituous or malt liquors;¹⁷ or prohibit their sale, if it does not interfere with vested rights;¹⁸ or impair the obligations of the charter created for the purpose of their manufacture.¹⁹ So, a State may tax liquor dealers,²⁰ or may license the sale of liquors, although a charter contains a prohibitory clause.²¹ It may establish reasonable regulations for the operation of mines,²² and under the police power may require qualifications for professional graduates.²³ When applied to corporations the police power is subject to constitutional limitations, and it cannot conflict with the charter;²⁴ but provisions for penalties and forfeitures in a charter are not mere matters of contract.²⁵ The legislature may authorize cities and towns to prohibit the erection of wooden buildings as a protection of person and property against fire.²⁶ Under the police power the legislature may authorize a railroad company to lay its tracks in the streets of a city.²⁷ An ordinance regulating the transportation of heavy merchandise in a city is valid.²⁸

1 *Lake View v. Rose Hill Cemetery*, 70 Ill. 191; *Daniels v. Hilgard*, 77 Ill. 640.

2 *Beer Co. v. Massachusetts*, 97 U. S. 25.

3 *Boyd v. Alabama*, 94 U. S. 645; *Beer Co. v. Massachusetts*, 97 U. S. 33.

4 *Ex parte Shrader*, 33 Cal. 279; *Philadelphia &c. R. R. Co. v. Bowlers*, 4 Houst. 506; *Beer Co. v. Massachusetts*, 97 U. S. 25.

5 *Slaughter-House Cases*, 16 Wall. 62; *Comm. v. Alger*, 7 Cush. 53.

6 *Kirby v. Pennsylvania R. R. Co.* 76 Pa. St. 506.

7 *People v. Hawley*, 3 Mich. 330.

8 *U. S. v. Dewitt*, 9 Wall. 41.

9 *Fertilizing Co. v. Hyde Park*, 70 Ill. 634; 97 U. S. 669.

10 *Moore v. State*, 48 Miss. 147.

11 *Bohl v. State*, 3 Tex. Ct. App. 663.

12 *Fertilizing Co. v. Hyde Park*, 97 U. S. 669; 70 Ill. 634; *Brady v. Weeks*, not yet reported.

13 *Brown v. Keener*, 74 N. C. 714; *Pool v. Trexler*, 76 Ibid. 297.

14 *Higgins v. Rinker*, 47 Tex. 381.

15 *State v. Foadick*, 21 La. An. 256; *N. H. &c. T. B. Co. v. Bunnell*, 4 Conn. 59; *Fertilizing Co. v. Hyde Park*, 97 U. S. 669.

- 16 *State v. Gurney*, 37 Me. 156.
- 17 *Higgins v. Rinker*, 47 Tex. 393.
- 18 *Bertholf v. O'Reilly*, 15 Am. Law Reg. N. S. 119; *Metrop. Bd. of Excise v. Barrie*, 34 N. Y. 657; *Beer Co. v. Massachusetts*, 97 U. S. 25; *Butler v. Walker*, 80 Ill. 345; *Comm. v. Intox. Liq.* 115 Mass. 153.
- 19 *Commonwealth v. Intox. Liq.* 115 Mass. 153.
- 20 *Sinclair v. State*, 69 N. C. 147.
- 21 *Dingman v. People*, 51 Ill. 277.
- 22 *Daniels v. Hilgard*, 77 Ill. 640; *Dingman v. People*, 51 Ill. 277.
- 23 *Regents v. Williams*, 9 Gill & J. 365; *State v. Heyward*, 3 Rich. 399; *Logan v. State*, 5 Tex. Ct. App. 306.
- 24 *Lake View v. Rose Hill Cemetery*, 70 Ill. 191; *State v. Foodick*, 21 La. An. 256.
- 25 *State v. Railroad Co.* 3 How. 534; 12 Gill & J. 399.
- 26 *Salem v. Maynes*, 123 Mass. 372.
- 27 *Perry v. N. O. R. R. Co.* 55 Ala. 613.
- 28 *People v. James*, 16 Hun. 426.

§ 2. The sessions of the Legislature shall commence at twelve o'clock M. on the first Monday after the first day of January next succeeding the election of its members, and, after the election held in the year eighteen hundred and eighty, shall be biennial, unless the Governor shall, in the interim, convene the Legislature by proclamation. No pay shall be allowed to members for a longer time than sixty days, except for the first session after the adoption of this Constitution, for which they may be allowed pay for one hundred days. And no bill shall be introduced, in either House, after the expiration of ninety days from the commencement of the first session, nor after fifty days after the commencement of each succeeding session, without the consent of two-thirds of the members thereof.

Similar restrictions as to introduction of bills—Ark. V, 34; Colo. V, 19; Md. III, 27; Mich. IV, 28; Tex. III, 37.

§ 3. Members of the Assembly shall be elected in the year eighteen hundred and seventy-nine, at the time and in the manner now provided by law. The second election of members of the Assembly, after the adoption of this Constitution, shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter, members of the Assembly shall be chosen biennially, and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature.

Election.—If a majority of the votes have been cast for a disqualified person, the one who received the next highest number is not to be returned as elected.

Saunders v. Haynes, 13 Cal. 145; *State v. Gles*, 1 Chand. 112; *Comm. v. Cluley*, 56 Pa. St. 270. But see *Stewart v. Hayes*, 3 Ch. L. N. 117; *Gulick v. New*, 14 Ind. 93; *Carson v. McPhetridge*, 15 Ind. 327; *People v. Chute*, 50 N. Y. 451.

§ 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year, next before his election.

§ 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two from the odd-numbered districts shall be vacated at the expiration of the second year, so that one-half

of the Senators shall be elected every two years; *provided*, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years.

§ 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty senatorial and eighty assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called senatorial and assembly districts. Each senatorial district shall choose one Senator, and each assembly district shall choose one member of Assembly. The senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the assembly districts shall be numbered from one to eighty, in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of such districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust such districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are

not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law.

§ 7. Each House shall choose its officers,¹ and judge of the qualifications, elections, and returns of its members.²

¹ Ark. V, 14; Mich. IV, 10; Mo. IV, 19; Neb. II, 10; N. J. IV, 4, 3; N. Y. III, 10; N. C. II, 18, 20, 22; Or. IV, 11; S. C. II, 15; Va. V, 7; W. Va. VI, 24; Wis. IV, 8.

² U. S. I, 5 (1); Ala. IV, 8; Ark. V, 11; Colo. V, 10; Del. II, 6; Fla. IV, 8; Ga. III, 4; Ill. IV, 9; Ind. IV, 10; Iowa, III, 7; Kan. II, 8; Ky. II, 20; La. 34; Me. IV; Part III, 3; Md. III, 19; Mich. IV, 10; Miss. IV, 10; Mo. IV, 17; Neb. III, 7; Nev. IV, 6; N. J. IV, 4, 2; N. Y. III, 10; N. C. II, 22; Ohio, II, 68; Or. IV, 11; Pa. I, 12; R. I. IV, 6; S. C. II, 14; Tenn. II, 11; Tex. III, 8; Vt. Part II, 7; Va. V, 7; W. Va. VI, 24; Wis. IV, 6.

Qualifications of members.—Whether a Senator has been regularly elected is a question exclusively for the Senate.¹ Members elected for an extra or special session must give way to regularly elected members for that Congress.² The House is to judge of the election of its members, and the returns are only *prima facie* evidence of election.³ A State law requiring votes to be returned within a certain time is directory only,⁴ and if not so returned are to be counted, if opportunity is had to count them.⁵ The refusal of the executive of a State to grant a certificate of election will not prejudice the right to a seat.⁶ The certificate may be followed by another under a changed condition of the facts.⁷ A certificate may issue on an amended return of votes,⁸ and a supplementary return is entitled to be received.⁹ The governor may revoke the certificate for fraud.¹⁰ *The qualifications of members* being fixed by the Constitution, additions cannot be required by State legislation or other acts.¹¹ If the House is unable to decide which of two is entitled to his seat, it must be declared vacant.¹² One who was allowed to take his seat on a *prima facie* case, but was afterwards ousted by a competitor rightfully elected, cannot be deemed to have been a member.¹³

¹ Anonymous, 12 Fla. 686.

² Gehlson & Claiborne's Case, 2 Cong. El. Cas. 9.

3 *Chrisman v. Anderson*, 2 Cong. EL. Cas. 226; *Spaulding v. Mead*, 1 *Ibid.* 157.

4 *Brockenborough v. Cabell*, 2 Cong. EL. Cas. 79.

5 *Richard's Case*, 1 Cong. EL. Cas. 26.

6 *Richard's Case*, Clark & H. 95; *Olement's Case*, Cont. EL. Cas. 1864-5, 366.

7 *Wallace v. Simpson*, Cont. EL. Cas. 1865-71, 552.

8 *Sleeper v. Rice*, Cont. EL. Cas. 1864-5, 472.

9 *Archer v. Allen*, 2 Cong. EL. Cas. 169; *Brockenborough v. Cabell*, *Ibid.* 84.

10 *Morlon v. Daily*, 2 Cong. EL. Cas. 403.

11 *Barney v. McCreery*, 1 Cong. EL. Cas. 167; *Turney v. Marshall*, 1 Cong. EL. Cas. 167; *Trumbull's Case*, *Ibid.* 618.

12 *Letcher v. Moore*, 1 Cong. EL. Cas. 715.

13 *Bowman v. Coffroth*, 59 Pa. St. 19.

§ 8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each House may provide.

U. S. I, 5 (1); Ala. IV, 10; Ark. V, 14; Conn. III, 7; Del. II, 6; Fla. IV, 8; Ga. III, 1, 10; Iowa, III, 8; Mo. IV, Part III, 3; Mich. IV, 8; Minn. IV, 3; Miss. IV, 12; Mo. IV, 18; Neb. II, 7; N. J. IV, § 4, 2; Pa. II, 10; W. Va. VI, 24; Wis. IV, 6.

§ 9. Each House shall determine the rule of its proceeding,¹ and may, with the concurrence of two-thirds of all the members elected, expel a member.²

1 U. S. I, 5 (2); Ala. IV, 11; Ark. IV, 14; Conn. III, 8; Del. II, 7; Fla. IV, 6; Ill. IV, 9; Ind. IV, 10; Kan. II, 8; Iowa, III, 9; Ky. II, 21; La. 39; Md. III, 19; Mass. Part II, Ch. 1, § 2, 7, § 3, 10; Mich. IV, 10; Minn. IV, 4; Miss. IV, 14; Mo. IV, 19; Neb. II, 10; Nev. III, 7; N. H. Part II, 22, 37; N. J. IV, 43; N. Y. III, 10; Ohio, II, 8; Or. IV, II; Pa. I, 13, II, 11; R. I. IV, 7; S. C. II, 15; Tenn. II, 12; Tex. III, 16; Va. V, 7; W. Va. IV, 23; VI, 24; Wis. IV, 7.

2 Ala. IV, 11; Ark. V, 12; Ga. III, 4; Ill. IV, 9; Mich. IV, 9; Mo. IV, 17; Md. III, 19; Wis. IV, 7; Tex. III, 2.

See U. S. Const. I, 5 (2).

Rules of its proceedings.—An express power to make laws was not necessary to enable the legislature to make them.¹ The express grant of power to punish for a contempt does not exclude the power to punish others than members of their own body,² in secret as in open session.³ The implied power to punish for contempt shall not extend beyond its known and acknowledged limit of fine and imprisonment, but the imprisonment must terminate with the adjournment.⁴ The power to punish for disobedience and contempt is a necessary incident to the power to require and compel attendance.⁵ The warrant need not set forth the facts constituting the alleged contempt,⁶ the legislative body being the only judge of its own privileges and contempts.⁷ A member may be expelled for any misdemeanor which, though not punishable by statute, is inconsistent with the trust and duty of a member.⁸

1 *McCulloch v. Maryland*, 4 Wheat. 316.

2 *Anderson v. Dunn*, 6 Wheat. 204; *Bolton v. Martin*, 1 Dall. 296; *Nugent's Case*, 1 Amer. Law J. 139.

3 *Nugent's Case*, 1 Amer. Law J. 139.

4 *Anderson v. Dunn*, 6 Wheat. 204.

5 *Stewart v. Blaine*, 1 McAr. 453; *Anderson v. Dunn*, 6 Wheat. 204; *Wickelhausen v. Willett*, 10 Abb. Pr. 164.

6 *Ex parte Nugent*, 1 Amer. Law J. N. S. 107.

7 *Ex parte Nugent*, 1 Amer. Law J. N. S. 107.

8 *Smith's Case*, 1 Hall Law J. 459.

§ 10. Each House shall keep a Journal of its proceedings, and publish the same,¹ and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the Journal.²

1 Fla. IV, 10; Ga. IV, 4 iv; Ill. IV, 10; Ind. IV, 12; Ky. II, 22; W. Va. VI, 24; Colo. V, 12; La. 136; Md. III, 22; Minn. IV, 5; Nev. IV, 14; N. J. IV, 4, 9; Ohio, II, 9; Tex. III, 12; Va. V, 10; W. Va. IV, 39.

2 Fla. IV, 10; Nev. IV, 14; Tex. III, 12; See Ala. IV, 13.

See U. S. Const. I, 5 (3); Neb. III, 8; N. C. IV, 13; Pa. II, 12.

Journal.—The office of the journal is to record the proceedings and authenticate and preserve the same. It must appear on the face of the journal that a bill passed by a constitutional majority.¹ But this refers only to the passage of bills. If a bill has been amended in the house the journal need only show that the amendment has been concurred in. A mere clerical mistake in the journal will not vitiate a statute.² A journal is a public record, of which courts may take judicial notice.⁴ The journal cannot be kept secret unless the proceedings are secret. The holding of a secret session by either House is in its discretion.⁵

1 Hull v. Miller, 4 Neb. 507.

2 McCulloch v. State, 11 Ind. 424; Hall v. Miller, 4 Neb. 507.

3 Supervisors v. Heenan, 2 Minn. 330.

4 Brown v. Nash, 1 Wyo. 85.

5 Nugent's Case, 1 Am. L. J. N. S. 139.

§ 11. Members of the Legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

Ala. IV, 14; Ark. V, 12; Mich. IV, 7; Mo. IV, 16; Miss. IV, 19; Neb. II, 16; Wis. IV, 15.

See Colo. V, 18.

Privilege from arrest.—Arrest implies corporal restraint.¹ The privilege from arrest could not be surrendered without endangering the public as well as the private independence of the member.² It extends to judicial as well as mesne process, and a person arrested is entitled to his discharge on the privilege afterwards acquired,³ but there is no privilege from the service or obligation of a subpoena in a criminal case.⁴ It is limited to a convenient and reasonable time in addition to the actual session.⁵ Members are privileged not only from arrest, but also from a service of summons or other civil process while in attendance on their public duties.⁶ The privilege applies to speech or debate in either House,⁷ but does not cover its publication by a member.⁸

- 1 *Wooley v. Butler*, 1 Bank. L. T. 35.
- 2 *Bolton v. Martin*, 1 Dall. 296; *Coffin v. Coffin*, 4 Mass. 1.
- 3 *Cox v. McClenachan*, 3 Dall. 478; *Nones v. Edsall*, 1 Wall. Jr. 189.
- 4 *U. S. v. Cooper*, 4 Dall. 341.
- 5 *Hoppin v. Jenckes*, 8 R. I. 453.
- 6 *Coxe v. McClenachan*, 3 Dall. 478; *Geyer v. Irwin*, 4 Dall. 107; *Nones v. Edsall*, 1 Wall. Jr. 191.
- 7 *Anderson v. Dunn*, 6 Wheat. 215.
- 8 *Coffin v. Coffin*, 4 Mass. 1.

§ 12. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

Del. Sched. 9; Ga. IV, 2; Ill. IV, 2; Ind. V, 19; Iowa, III, 12; Nev. IV, 12; Tenn. II, 15.

Vacancies may be created by death, resignation, or removal, or by the acceptance of an incompatible office.¹ A resignation sent to the governor of a State is sufficient.² The executive may issue writs for a new election without waiting to be informed by the House that a vacancy exists.³

1 *People v. Carrique*, 2 Hill, 93; *Powell v. Wilson*, 16 Tex. 60; *Bien-court v. Parker*, 27 Tex. 562.

2 *Edward's Case*, Clark & H. 92; *Mercer's Case*, *Ibid.* 44; *Bledsoe's Case*, *Ibid.* 869.

3 *Mercers's Case*, Clark & H. 44.

§ 13. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

Ala. IV, 15; Iowa, III, 13; S. C. II, 27.

§ 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting.¹ Nor shall the members of either House draw pay for any recess or adjournment for a longer time than three days.

1 U. S. I, 5 (4); Ala. IV, 16; Ark. V, 23; Del. II, 10; Ga. III, 4, vii; Ind. IV, 10; Iowa, III, 14; Ky. II, 23; La. II, 38; Me. IV, Pt. 3, 12; Md. III, 25; Mich. IV, 12; Miss. IV, 13; Nev. IV, 13; N. J. IV, 4, 5; Pa. II, 14; S. C. II, 25; Tenn. II, 16; Tex. III, 17; Va. V, 6; W. Va. VI, 23.

See Colo. V, 15; Kan. II, 10; Mo. IV, 23; Neb. III, 8; N. Y. III, 11; Ohio, II, 14; Or. IV, 11; R. I. IV, 9.

An adjournment of the house for more than three days without the concurrence of the senate does not *ipso facto* work a dissolution of the general assembly.

West Phila. Pass. R. R. Co. v. Union Pass. R. Co. 4 Leg. Gaz. 193. 29 Leg. Int. 196.

§ 15. No law shall be passed except by bill.¹ Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed² for the use of the members; nor shall any bill become a law unless the same be read on three several days in each House,³ unless, in case of urgency, two-thirds of the House where such bill may be pending shall, by a vote of yeas and nays, dispense with this provision.⁴ Any bill may originate in either House, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal;⁵ and no bill shall become a law without the concurrence of a majority of the members elected to each House.⁶

1 Ala. IV, 19; Ark. III, 21; Colo. V, 17; Ind. IV, 1; Mo. IV, 25; N. Y. III, 14; Or. IV, 1; Tex. III, 30; Wis. IV, 17.

2 Ill. IV, 13; Neb. III, 11.

3 Ala. IV, 21. See Ga. III, 3; Ky. II, 29; La. II, 42; Neb. III, 11; Tex. III, 32.

4 Ark. V, 21; Md. III, 27; Minn. IV, 20; Miss. IV, 23.

5 Vote to be by yeas and nays and entered on the journal—Ala. IV, 21; Ark. V, 21; Fla. IV, 15; Ill. IV, 12; IV, 31; Neb. III, 10; N. Y. III, 15.

See Kan. II, 15; Md. III, 27, 28; Nev. IV, 18; N. C. II, 23; Ohio, II, 16; Or. IV, 19; Pa. III, 1, 4, 5; S. C. II, 21; Tenn. II, 18; Tex. III, 32; Va. V, 10; W. Va. VI, 29.

6 Ill. IV, 12; Ind. IV, 25; Iowa, III, 17; Md. III, 28; Mich. IV, 19; Minn. IV, 13; Neb. III, 10; Mo. IV, 24; Nev. IV, 18; N. Y. III, 15; Ohio, II, 9; W. Va. IV, 31.

Passage of bills.—This provision is mandatory as to the duty and consciences of members of the legislature, who are bound by oath to obey the constitution, and any intentional disregard is a breach of duty and of oath.¹ A bill becomes a law when it has gone through all the forms necessary.² That the bill should be read on three several days does not require that everything to become a law shall be thus read,³ and where it appears from the journal of the senate that the rule was suspended by a vote of three-fourths, while it is silent as to the reason, the presumption is that the case was urgent.⁴ A bill creating a private banking corporation is not of such a general nature as to require passage upon a call of the "ayes and noes."⁵ The requirement as to the yeas and nays is directory.⁶ Two-thirds of the house means two-thirds of the quorum, and a majority of the house means a majority of the quorum.⁷ When a law is signed by the speakers of both houses, and approved by the governor, it is presumed to have been passed in conformity to constitutional requirements,⁸ and when passed, approved, and certified in due form, courts cannot go behind these to inquire into the form of its passage;⁹ but journals may be examined to show where the legal requirements have been complied with.¹⁰ The presumption is that a published law was correctly passed as to matters of form,¹¹ but courts may look beyond printed statutes to the certificate on the original engrossed bill on file with the secretary of State,¹² and may look to the hour of the day of the passage of an act.¹³ An issue of fact whether a particular bill has been passed by the legislature in conformity with the constitution will not be submitted to a jury.¹⁴ A joint resolution when duly enrolled, signed, and approved, is equal in dignity and equally effectual to modify or repeal existing laws;¹⁵ but if it be of a public nature, and never published, it is not in force;¹⁶ so, a joint resolution on a subject which by the constitution requires an act thereof, is void.¹⁷

1 Kilgore v. Magee, 85 Pa. St. 401.

2 Jones v. Hutchinson, 43 Ala. 721; Hull v. Miller, 4 Neb. 507.

3 Dew v. Cunningham, 28 Ala. 466; Supervisors v. Heenan, 2 Minn. 330.

4 Hull v. Miller, 4 Neb. 507.

5 Ferguson v. Miner & Co. Bank, 3 Sneed, 609.

6 People v. Supervisors, 8 N. Y. 317; Darlington v. N. Y. 21 Robt. 274.

- 7 *Green v. Weller*, 32 Miss. 650.
- 8 *Larrison v. Peoria &c. Co.* 77 Ill. 11; *Turley v. Logan Co.* 17 Ill. 151.
- 9 *Kilgore v. Magee*, 85 Pa. St. 401.
- 10 *Turley v. Logan Co.* 17 Ill. 151; *Purdy v. People*, 4 Hill, 384.
- 11 *People v. Supervisors*, 8 N. Y. 317.
- 12 *Purdy v. People*, 4 Hill, 384.
- 13 *Lapeyre v. U. S.* 17 Wall. 202; *Brainard v. Bushnell*, 11 Conn. 16; *People v. Clark*, 1 Cal. 406; *Gardner v. Collector*, 6 Wall. 499; *Wellman, Matter of*, 20 Vt. 653.
- 14 *Blessing v. Galveston*, 42 Tex. 641.
- 15 *Swann v. Buck*, 40 Miss. 268.
- 16 *State v. School Fund Board*, 4 Kans. 261.
- 17 *Boyers v. Crane*, 1 W. Va. 176.

Amendments.—An amended title may be passed by a majority of a mere quorum.¹ When a section has been stricken out by the house, and the bill so amended has never passed the Senate, it is a nullity.²

1 *Johnson v. People*, 83 Ill. 431.

2 *Prescott v. Illinois & M. Can.* 19 Ill. 324.

§ 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, two-thirds of the members elected to each House voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of

State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

See Ala. V, 13; Ark. VI, 15, 16; Colo. IV, 11; Conn. IV, 12; Fla. V, 27; Ga. IV, 7; Ill. V, 16; Ind. V, 14; Iowa, III, 16; Kans. II, 14; Ky. III, 22; La. III, 66; Me. IV, Pt. III, 2; Md. III, 30; Mass. Pt. II, Ch. I, 2; Mich. IV, 14; Minn. IV, 11; Miss. IV, 24; Mo. V, 12; Neb. V, 15; Nev. V, 35; N. H. Pt. II, 44; N. J. V, 7; N. Y. IV, 9; Or. V, 15; Pa. IV, 15, 16; S. C. IV, 22; Tenn. IV, 18; Tex. IV, 14; Vt. Amend. XII, Va. IV, 8; W. Va. VII, 14; Wis. V, 10. Disapproval of Items, Ala. V, 14; Ark. VI, 17; Colo. IV, 12; Fla. IX, 22; Amend. N. J. V, 7, Amend.

Legislative acts.—An act of the legislature does not become a law until it has been passed by the legislature and approved by the governor;¹ so, a repealing act does not become a law till its approval.² After transmission of the bill to the governor, neither house can recall it.³ The governor may sign a bill after adjournment of the legislature.⁴ In computing the "ten days" within which a bill may be returned by the governor, the day on which the bill was presented to the governor must be excluded.⁵ They include the days the legislature is not in session, if not finally adjourned.⁶ He is not obliged to return the bill unless the legislature continues in session.⁷ An adjournment of either house from day to day is not such an adjournment as would prevent the governor from returning the bill.⁸ The act of the secretary of state laying the bill on the speaker's table, before final adjournment, is a sufficient return of the bill.⁹ The secretary of state may transmit to the legislature, in extra session, a bill vetoed

by the governor after the expiration of the regular session; but unless he calls attention to it, and requires action thereon, the legislature cannot act till the next regular session.¹⁰ That the governor cannot act on the bill because of some supposed informality in its passage is in effect an objection to the bill.¹¹ After a vote on reconsideration, no further action can be had, as the vote is final, and a motion to reconsider it is not in order.¹² In approving a statute, the governor acts as a part of the legislative branch of the government.¹³

1 *Wartman v. Philadelphia*, 33 Pa. St. 202.

2 *Memphis v. U. S.* 97 U. S. 293.

3 *People v. Devlin*, 30 N. Y. 269.

4 *People v. Bowen*, 21 N. Y. 517; 30 Barb. 24. But see *Trustees &c. v. Co. Commissioners*, 1 Nev. 334; *Thornburg v. Herman*, *Ibid.* 473.

5 *Iron Mt. Co. v. Haight*, 39 Cal. 540; *Price v. Whitman*, 8 Cal. 412; *Opin. of Justices*, 45 N. H. 607; *People v. Hatch*, 33 Ill. 9.

6 *Opin. of Justices*, 45 N. H. 607.

7 *People v. Hatch*, 33 Ill. 9.

8 *Harpending v. Haight*, 39 Cal. 189.

9 *Opin. of Justices*, 45 N. H. 607.

10 *Jones v. Theall*, 3 Nev. 233.

11 *Birdsall v. Carrick*, 3 Nev. 154.

12 *Sank v. Philadelphia*, 8 Phila. 117.

13 *Fowler v. Pierce*, 2 Cal. 165.

§ 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate.¹ When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.²

1 See U. S. Const. I, 3 (6); Ark. XV, 2; Colo. XIII, 1; Conn. IX, 2; Del. V, 1; Fla. Amend. II, 29; Ga. III, 2 (4); Ill. IV, 24; Kans. II, 27; La. V, 35; Me. IV, Pt. II, 7; Md. III, 28; Mass. Pt. II, 8; Mich. XII, 1, 2; Miss. IV, 27; Mo. VII, 2; Neb. III, 14; Nev. VII, 1; N. H. Senate, 38; N. Y. VI, 1 Amend.; N. C. IV, 3, 4; Ohio, II, 23; R. I. XI, 1; S. C. VII, 2; Tenn. V, 2; Tex. XV, 1, 2; Vt. Amend. Art. VII.

2 Ala. IV, 24; Iowa, III, 19; Ky. V, 2; Pa. VI, 2; Va. V, 16.

Trial of impeachment.—A member of the house voting for the prosecution of an impeachment is not thereby rendered disqualified, if subsequently elected to the senate, from sitting on the trial thereof.¹ All the functions of the governor are entirely suspended during his trial.² For an impeachment to be effectual the articles must be presented to the senate, and a constitutional quorum of the entire membership must receive it.³

1 Addison's Trial, 21-8; Porter's Trial, 53.

2 Opin. of Judges, 3 Neb. 464.

3 Executive Communication, 12 Fla. 638.

§ 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Chief Justice and Associate Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

See Colo. XIII, 2; Conn. IX, 3; Fla. V, 28; Pa. VI, 3.

Impeachment.—While the constitution has provided for the impeachment of certain officers, it has left all other civil officers to be tried for misdemeanors in such manner as the legislature may provide.¹ A presiding judge is liable to impeachment for preventing an associate judge from delivering his opinion to a grand or petit jury upon a matter before the court,² as each member of the court has a right to and it is his duty to deliver his opinion on every subject that occurs in his court.³ A removal from office for an offense committed is a part of the judgment.⁴ Judges cannot be removed by *quo warranto*.⁵

- 1 Matt. of Marks, 45 Cal. 200.
- 2 Addison's Trial, 114, 151.
- 3 Addison's Trial, 114; Comm. v. Addison, 4 Dall. 225; Porter's Trial, 61.
- 4 Comm. v. Harris, 1 Leg. Gaz. 455.
- 5 State v. Gardner, 43 Ala. 234.

§ 19. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which have been increased, during such term, except such offices as may be filled by election by the people.

Ala. IV, 19; Iowa, III, 21; Ky. II, 26; Me. IV, 3, 10; Miss. IV, 38; Mo. IV, 15; Nev. IV, 8; Va. V, 8; Pa. II, 6.

See U. S. Const. I, 6 (2).

Offices.—This section does not disqualify from holding an office the emoluments of which are increased during his term, but after his election to such office.

State v. Boyd, 21 Wis. 208.

§ 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia, who receive no annual salary, local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed to hold lucrative offices.

See Ala. XVI, 1; Colo. V, 8; Conn. X, 4; Del. III, 8; Ga. III, 1; Ill. IV, 3; Ind. II, 9; Iowa, III, 22; Kans. II, 5; Ky. VIII, 18; Me. Art. IV, Pt. III, 11; Md. III, 10; Me. IV, Pt. III, 11; Mass. Amend. VIII; Mich. IV, 6; Mo. XIV, 4; Neb. III, 6; Nev. IV, 9; N. Y. III, 8; N. C. XIV, 7; Or. II, 10; Pa. XII, 2; R. I. IX, 6; S. C. II, 28; Tex. XVI, 12; Vt. II, 26; W. Va. VI, 13; Wis. XIII, 3; U. S. Const. I, 6 (2).

Eligibility. — “Eligible” means capable of being chosen—the subject of selection or choice; and “compensation” means the income of the office, not its profits.¹ An inspector of customs is a “lucrative office”;² so, the office of surveyor-general is a “lucrative office,” and the office of controller is an “office of profit.”³ A county school superintendent is a civil officer within the meaning of this section.⁴ If a member at the time of his election hold a disqualifying office, it is sufficient that he qualify himself by a resignation of it before he is sworn in.⁵ The appointment to a second incompatible office is not absolutely void, but the first office is *ipso facto* vacated.⁶ A person holding two compatible offices is not precluded from holding the salaries of both.⁷

1 Searcy v. Grow, 15 Cal. 117.

2 Saunders v. Haynes, 13 Cal. 145. And see People v. Turner, 20 Cal. 142; Crawford v. Dunbar, 52 Cal. 36.

3 Melony v. Whitman, 10 Cal. 38.

4 Crawford v. Dunbar, 52 Cal. 36.

5 Comm. v. Pyle, 18 Pa. St. 519.

6 People v. Carrique, 2 Hill, 93; Biencourt v. Parker, 27 Tex. 558.

7 Converse v. U. S. 21 How. 463; Brown's Case, 9 Op. Att.-Gen. 508.

§ 21. No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

Ala. IV, 18; Ark. V, 9; Colo. XII, 4; Fla. V, 9; Ga. II, 3; Ill. IV, 4; N. H. Pt. II, 36; Nev. IV, 10; Pa. II, 7; W. Va. VI, 14.

§ 22. No money shall be drawn from the treasury but in consequence of appropriations made by law,¹ and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, associ-

ation, asylum, hospital, or any other institution not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State;² *provided*, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that the State shall have, at any time, the right to inquire into the management of such institutions; *provided further*, that whenever any county, or city and county, or city, or town shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.³

1 Ala. IV, 33; Ark. V, 29; Colo. V, 33; Del. II, 15; Fla. XIII, 4; Ga. III, 6; Ill. IV, 17; Ind. X, 3; Iowa, III, 24; Kans. II, 24; Ky. VIII, 5; La. 104; Me. V, Pt. IV, 4; Md. III, 32; Mass. Pt. II, ch. II, § 1, art. II; Mich. XIV, 5; Minn. IX, 9; Miss. IV, 36; Mo. XI, 6; IV, 43; Neb. III, 22; Nev. IV, 19; N. H. Pt. II, 56; N. J. IV, 6; N. C. XIV, 3; Ohio, II, 22; Or. IX, 4; Pa. I, 22; S. C. IX, 12; Tenn. II, 24; Tex. VIII, 6; Vt. Pt. II, 17; Va. X, 10; W. Va. VIII, 4; Wis. V, III, 2.

2 Ala. IV, 33; Colo. V, 34; Ga. III, 6; Ill. IV, 17; Ky. VIII, 5; Mich. IV, 40; Minn. I, 16; Mo. IX, 10; Or. I, 5; Wis. I, 17.

3 Ala. IV, 33; Ark. V, 29; Ind. X, 4; Iowa, III, 18; Kans. II, 24; La. 104; Mich. XVIII, 5; Me. V, Pt. IV, 4; Md. III, 32; Minn. IX, 11; Nev. IV, 19; N. C. XIV, 3; Or. IX, 5; Pa. II, 24; S. C. IX, 11.

Appropriations.—It is not necessary that funds to meet an appropriation should be in the treasury ; nothing more is necessary than a designation of the amount and the fund out of which it is to be paid.¹ The State may provide for bounties to soldiers.² A penalty, not being a tax, its appropriation to a private corporation is not unconstitutional.³

1 *McCanley v. Brooks*, 16 Cal. 11; *People v. Miner*, 46 Ill. 384.

2 *Comer v. Folsom*, 13 Minn. 219; *Wilson v. Buckman*, *Ibid.* 441.

3 *Collins v. Socl. of District Pilots*, 73 Pa. St. 194.

§ 23. The members of the Legislature shall receive for their services a per diem and mileage, to be fixed by law, and paid out of the public treasury; such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile, and for contingent expenses not exceeding twenty-five dollars for each session. No increase in compensation or mileage shall take effect during the term for which the members of either House shall have been elected, and the pay of no attaché shall be increased after he is elected or appointed.

Ark. V, 16; Ill. IV, 13; Mo. IV, 16; Pa. II, 8.

§ 24. Every Act shall embrace but one subject, which subject shall be expressed in its title.¹ But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be re-enacted and published at length as revised or amended;² and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings

shall be conducted, preserved, and published in no other than the English language.

1 Ala. IV, 2; Colo. V, 21; Ill. IV, 13; Ind. IV, 19; Iowa, III, 29; Kans. II, 16; Ky. II, 37; Mich. IV, 19; Minn. IV, 27; Mo. IV, 32; Pa. III, 3; S. C. II, 20; Tex. III, 35; Va. V, 15; W. Va. VI, 30.

2 Fla. IV, 14; Ill. IV, 13; Ind. IV, 21; La. III, 115; Nev. IV, 17; Or. IV, 22; Tex. XII, 18; Va. V, VI, 30.

See Ala. IV, 2; Colo. IV, 24; Mo. IV, 33; Neb. III, 11; N. J. IV, 7; Pa. III, 6; Tex. III, 36.

Construction.—The object of this section is to prevent surreptitious legislation by incorporating provisions having no connection with the general object of the bill.¹ As to the title of an act, this section is merely directory, and does not avoid laws passed in violation of it;² but as to amendatory acts it is mandatory;³ yet when the caption of an amendatory act misrecites the date of the act amended, and the mistake can surprise or mislead no one, the validity of the amendatory act is not thereby affected:⁴ it is to be liberally construed.⁵

1 *White v. City of Lincoln*, 5 Neb. 516.

2 *Washington v. Page*, 4 Cal. 388; *Ex parte Newman*, 9 Cal. 502; *De Witt v. S. F.* 2 Cal. 289; *Pierpont v. Crouch*, 10 Cal. 315; *Ream v. Siskiyou Co.* 36 Cal. 620; *Denham v. Holeman*, 28 Ga. 182; *Comm. v. Drewry*, 15 Gratt. 1; *Morford v. Unger*, 8 Clarke, 82; *Henry v. Henry*, 13 Ind. 250; *Thomasson v. State*, 15 Ibid. 449; *Hines v. Aydelotte*, 29 Ind. 518; *State v. Squires*, 28 Iowa, 340; *Parkinson v. State*, 14 Md. 184; *Chiles v. Drake*, 2 Met. (Ky.) 146; *Phillips v. R. R. Co.* Ibid. 219; *Police Jury v. Colomb*, 20 La. An. 196; *Supervisors v. Heenan*, 2 Minn. 330; *Gifford v. New Jersey R. & T. Co.* 2 Stockt. Ch. 171; *Swann v. Buck*, 40 Miss. 268; *Pim v. Nicholson*, 6 Ohio St. 176.

3 *Ex parte Mabry*, 5 Tex. Ct. App. 83; *Tuskaloosa Br. Co. v. Olmstead*, 41 Ala. 9; *Weaver v. Lapsley*, 43 Ala. 224.

4 *State v. McCracken*, 42 Tex. 383.

5 *Ex parte Mabry*, 5 Tex. Ct. App. 83.

But one subject.—The subject of a law is discovered by the same rules as its proper construction.¹ The unity of the object is to be looked for in the ultimate object to be attained.² If the provisions of an act come fairly within the object expressed in its title, mere incongruities of important divisions, subdivisions, or classifications of provisions, will not render it void.³ So, the introduction of a single foreign subject, not expressed in the title, would not render it void; but if subjects are dissimilar, so that no one can be recognized as the principal, the whole law is void.⁴ An act embracing more than one subject is unconstitutional;⁵ but if it only technically embraces more than one subject it is not, therefore, invalid;⁶ so, an act in relation to expenses incident to criminal

prosecutions, which declares that fines and forfeitures shall be paid into the State treasury, is unconstitutional;⁷ so, imposing a tax and designating collectors are distinct subjects.⁸ Where an act is passed "regulating charges for transportation of freight on railroads," so much of the body of the act as relates to transportation of passengers is unconstitutional.⁹ A statute, to be constitutional, must embody but one subject, but the comprehension of mere incidents is not an infringement;¹⁰ so, if matters are properly connected with the main subject, the law is valid.¹¹ Where the objects are parts of one enterprise and have proper relation to each other, it is not obnoxious;¹² so, the repeal of former laws is properly connected with enactments of new ones.¹³ A statute is valid so long as it introduces nothing foreign or incongruous.¹⁴ Where the objects of a supplement were germane to the original act they are sufficiently expressed in the title.¹⁵

1 *Parkinson v. State*, 14 Md. 184.

2 *State v. Davis Co.* 2 Clarke, Iowa, 280; *Railroad Co. v. Ballard*, 2 Met. (Ky.) 165; *Brewster v. Syracuse*, 19 N. Y. 116; *Matt. of Church Street*, 54 Pa. St. 353; *Ex parte Mayor*, 50 N. Y. 504; *People v. Briggs*, *Ibid.* 553.

3 *Robinson v. State*, 15 Tex. 311; *People v. Wright*, 70 Ill. 388; *Dewitt v. San Francisco*, 2 Cal. 289.

4 *Davis v. State*, 7 Md. 151.

5 *Bills v. State*, 42 Tex. 305.

6 *Supervisors v. Heenan*, 2 Minn. 330.

7 *Bossier v. Steele*, 13 La. An. 433.

8 *People v. Lawrence*, 36 Barb. 177.

9 *Evans v. Memphis & c. Co.* 56 Ala. 246.

10 *Rader v. Town of Union*, 39 N. J. 509.

11 *Whiting v. Mount Pleasant*, 11 Iowa, 482.

12 *Gifford v. N. J. R. R. Co.* 2 Stockt. 171.

13 *Gabbert v. Jeffersonville R. R. Co.* 11 Ind. 365.

14 *People v. Mahaney*, 13 Mich. 481.

15 *State Line & J. R. R. Co.'s App.* 77 Pa. St. 429.

Instances.—An act amending a charter and to create a board of park commissioners and authorize a levy of a tax, involves but one subject;¹ provisions and measures for payment are part of the same subject;² so, an act relating to highways and assessment of damages for losses occasioned contains but one subject.³ An act giving to a new corporation the rights, etc., of the old one embraces but one object;⁴ so, a provision for a forfeiture of charter in an incorporation act is not obnoxious.⁵ Forming new counties and changing boundaries are properly united in one statute,⁶ and an act for the removal of a

county seat and providing for the payment of the cost thereof contains but one subject.⁷ An act to authorize a grant of license and to impose a license tax for the privilege, with provisions to enforce it, is not obnoxious.⁸ An act amending a license act may refer to several subjects relating solely to license.⁹ An act providing for the receipt and payment of fees of tax collector into the treasury embraces but one object.¹⁰ So, a "dog-tax law,"¹¹ or an act in relation to lands and levees, embraces but one object.¹² An act which relates to the duties and compensation of a state printer is not obnoxious;¹³ so, an act regulating procedure may provide for a revision in a higher court.¹⁴ An act may embrace several offenses.¹⁵

1 Prescott v. Chicago, 60 Ill. 121.

2 People v. Lawrence, 36 Barb. 177.

3 Hines v. Aydelotte, 29 Ind. 518.

4 Tadlock v. Eccles, 20 Tex. 782.

5 C. P. R. R. Co. v. Hannaman, 22 Ind. 484.

6 Hazzard v. Hawkins, 14 Ind. 299.

7 Allen v. Tison, 50 Ga. 374.

8 Davey v. Galveston Co. 45 Tex. 291.

9 State v. Bowers, 14 Ind. 195.

10 Ream v. Siskiyon Co. 36 Cal. 620.

11 Ex parte Maboy, 5 Tex. Ct. App. 93.

12 Police Jury v. Colomb, 20 La. An. 196.

13 Walker v. Dunham, 17 Ind. 483.

14 Murphy v. Menard, 11 Tex. 673.

15 Miles v. State, 40 Ala. 39.

Title of act.—The title of an act is now deemed a part of the act,¹ and limits and controls the bill.² The constitutional provision is that the title should express only the subject, not the object.³ If the title be simple it is only those provisions not covered by it which are void.⁴ Where there is nothing in the title to indicate the subject contemplated by a section, it is void;⁵ so, an act which does not represent in its title the purposes for which it is enacted is unconstitutional;⁶ so, portions of an act which contain subject-matters different from that contained in the title, and from other parts of the act, are void;⁷ but where there is no discrepancy between the body and title the act is constitutional;⁸ so, where a section is within the scope of the title it is constitutional.⁹ It is not necessary that the title of an act should be a complete index of its contents;¹⁰ or that the title should set up a synopsis of the act;¹¹ or that it should be as comprehensive as the act itself.¹² This provision does not define the degree

of particularity with which the title is to express the subject; it is for the legislature to select the title.¹³ The act may contain any provision which is germane to the primary object of the bill.¹⁴ Where the bill has one general object it is sufficient if the subject is fairly expressed in the title.¹⁵ The title should not mislead or tend to avert inquiry, but any expression in the title which calls attention to the subject of the bill, although in general terms, is sufficient.¹⁶ The title of an act, though not very apt, may nevertheless not invalidate the law;¹⁷ and the mere fact that it is more restrictive than the title of the bill when it passed one of the houses will not necessarily defeat the whole act.¹⁸ General provisions are not rendered void by reason of being contained in the same act with others of merely local application, though the title refer to the latter only;¹⁹ so, a homestead act may treat also of exemptions;²⁰ and a provision in an act to incorporate a college, prohibiting the sale of ardent spirits, although not named in the title, is not unconstitutional;²¹ but the clause "other instruments" in an act concerning bills and notes is void if not embraced in the title.²² An error in the title will not render the act unconstitutional where the object is plainly set forth;²³ nor will a clerical error, before the governor's approval, if such error cannot mislead.²⁴ That the subject must be embraced in the title applies only to acts, and not to resolutions or by-laws of municipal corporations.²⁵

1 *Pennsylvania R. R. Co. v. Riblet*, 86 Pa. St. 164; *Union Pass. R. Co.'s App.* 29 Leg. Int. 380; *Comm. v. Dickinson*, *Ibid.* 604; 30 *Ibid.* 53; *Philadelphia v. Donahue*, 5 Leg. Gaz. 22; *Ely's App.* 70 Pa. St. 311.

2 *Binz v. Weber*, 81 Ill. 288.

3 *People v. Lawrence*, 36 Barb. 177.

4 *Williams v. Payson*, 14 La. An. 7; *Phillips v. N. Y.* 1 Hilt. 483.

5 *White v. City of Lincoln*, 5 Neb. 516.

6 *Beckert v. Allegheny City*, 85 Pa. St. 191.

7 *Ex party Pollard*, 40 Ala. 77; *Mayor of Savannah v. State*, 4 Ga. 26; *Prothro v. Orr*, 12 Ga. 36; *Board of Education v. Barlow*, 49 Ga. 232; *San Antonio v. Gould*, 34 Tex. 49; *Giddings v. San Antonio*, 47 Tex. 548.

8 *Robinson v. Lane*, 19 Ga. 337; *Hill v. Commrs.* 22 Ga. 203.

9 *Mauch Chunk v. McGee*, 81 Pa. St. 433.

10 *Sun Mut. Ins. Co. v. New York*, 8 N. Y. 24; *Reed v. State*, 12 Ind. 641; *Comm. v. Green*, 58 Pa. St. 226; *Yeager v. Weaver*, 64 *Ibid.* 425.

11 *Martin v. Broach*, 6 Ga. 21.

12 *Burke v. Monroe Co.* 77 Ill. 610.

13 *People v. McCallum*, 1 Neb. 194.

14 *Burke v. Monroe Co.* 77 Ill. 610.

15 *White v. City of Lincoln*, 5 Neb. 516; *Mauch Chunk v. McGee*, 81 Pa. St. 433.

16 *Johnson v. People*, 83 Ill. 431; *Allegheny Co. v. Home*, 77 Pa. St. 77; *Mauch Chunk v. McGee*, 81 Pa. St. 433.

17 *Coffman v. Keightley*, 24 Ind. 509; *Board of Commrs. v. Bears*, 25 Ind. 110.

18 *Binz v. Weber*, 81 Ill. 288.

19 *People v. McCann*, 16 N. Y. 58.

20 *Tuttle v. Strout*, 7 Minn. 465.

21 *O'Leary v. Cook*, 28 Ill. 534.

22 *Mewheter v. Price*, 11 Ind. 199.

23 *State v. Elvins*, 3 Vroom, 362.

24 *People v. Onondaga*, 16 Mich. 254.

25 *Green v. Indianapolis*, 25 Ind. 490.

Amendatory acts.—Where an act is not complete in itself, but is simply amendatory, it is within the inhibition;¹ so, if it treats of a subject not embraced in the title it is void;² but it need not embrace provisions embraced in the original act.³ The alteration of a former act by an amendatory act creates no discrepancy between the title and the act,⁴ and a former act may be made applicable by reference and without recital.⁵ The amendment of a statute operates as an absolute repeal of the old statute or section amended.⁶ A repeal of all inconsistent acts is not obnoxious to the provision of "setting out at length."⁷

1 *Smalls v. White*, 4 Neb. 357.

2 *Igoe v. State*, 14 Ind. 239.

3 *Brandon v. State*, 16 Ind. 197.

4 *Robinson v. Lane*, 19 Ga. 337; *Hill v. Commrs. of Decatur*, 22 Ga. 203.

5 *Wells v. Buffalo*, 14 Hun. 438.

6 *Billings v. Harvey*, 6 Cal. 331.

7 *People v. Mahaney*, 13 Mich. 481.

§ 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:^A

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.¹

Second—For the punishment of crimes and misdemeanors.²

Third—Regulating the practice of courts of justice.³

Fourth—Providing for changing the venue in civil or criminal actions.⁴

Fifth—Granting divorces.⁵

Sixth—Changing the names of persons or places.⁶

Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State.⁷

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.⁸

Ninth—Regulating county and township business, or the election of county and township officers.⁹

Tenth—For the assessment or collection of taxes.¹⁰

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.¹¹

Twelfth—Affecting the estates of deceased persons, minors, or other persons under legal disabilities.¹²

Thirteenth—Extending the time for the collection of taxes.¹³

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.¹⁴

Fifteenth—Refunding money paid into the State treasury.¹⁵

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.¹⁶

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.¹⁷

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.¹⁸

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.¹⁹

Twentieth—Exempting property from taxation.²⁰

Twenty-first—Changing county seats.²¹

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.²²

Twenty-third—Regulating the rate of interest on money.²³

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.²⁴

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.²⁵

Twenty-sixth—Remitting fines, penalties, or forfeitures.²⁶

Twenty-seventh—Providing for the management of common schools.²⁷

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.²⁸

Twenty-ninth—Affecting the fees or salary of any officer.²⁹

Thirtieth—Changing the law of descent or succession.³⁰

Thirty-first—Authorizing the adoption or legitimation of children.³¹

Thirty-second—For limitation of civil or criminal actions.³²

Thirty-third—In all other cases where a general law can be made applicable.³³

Local and special legislation.—In the absence of constitutional inhibition against special legislation, it is no objection to a public statute that it is local in its effect, (*Orr v. Rhine*, 45 Tex. 345; and see *People v. C. P. R. R. Co.* 43 Cal. 398) and courts cannot hold such laws void for want of constitutional power to enact them. (*Beyman v. Black*, 47 Tex. 558.) The authority to enact laws strictly local implies the same authority to make local exceptions to a general law. (*Ibid.*) An act to encourage stock-raising is not unconstitutional on account of its operation being suspended as to a large number of counties. (*Ibid.*) The creation of a county office does not prohibit the legislative creation of others. (*Northumberland Co. v. Zimmerman*, 75 Pa. St. 26.) A local or special statute is limited in the object to which it applies; but it may be perpetual. A temporary general law is not within the inhibition. (*People v. Wright*, 70 Ill. 388.) General laws are those which relate to or bind all within the jurisdiction of the law-making power. (*People v. Cooper*, 83 Ill. 585.)

1 Colo. V, 25; Fla. V, 17; Ill. IV, 22; Ind. IV, 22; Neb. III, 15; Nev. IV, 20; Or. IV, 25.

2 Fla. IV, 17; Ind. IV, 22; Nev. IV, 20; Or. IV, 23.

3 Colo. V, 25; Fla. V, 17; Ill. IV, 22; Ind. IV, 22; Mo. IV, 53; Neb. III, 15; Nev. IV, 20; Or. IV, 23; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

4 Ark. V, 24; Colo. V, 25; Fla. V, 17; Ill. IV, 22; Ind. IV, 22; Ky. II, 38; Mo. IV, 53; Neb. III, 15; Nev. IV, 20; N. J. IV, 7; N. Y. II, 18 Amend.; Or. IV, 23; Pa. III, 7; Tex. III, 56.

5 Ala. IV, 30; Ark. V, 24; Colo. V, 25; Fla. V, 17; Ill. IV, 22; Ind. IV, 22; Iowa, III, 27; Kans. II, 18; Ky. II, 32; La. VII, 117; Md. III, 33; Mich. IV, 28; Minn. IV, 23; Miss. IV, 22; Mo. IV, 53; Neb. III, 15; Nev. IV, 22; N. J. IV, 7, 1; N. Y. II, 18 Amend.; N. C. II, 10; Ohio, II, 32; Or. IV, 23; Pa. III, 7; S. C. XIV, 5; Tenn. XI, 4; Tex. III, 56; Va. V, 20; W. Va. VI, 39; Wis. IV, 24.

Divorces.—An act authorizing a special divorce for an unusual cause is void

Teft v. Teft, 3 Mich. 67.

6 Ark. V, 24; Colo. V, 25; Fla. V, 17; Ga. III, 6; Ill. IV, 22; Ind. IV, 22; Iowa, III, 30; Ky. II, 32; La. VII, 117; Md. III, 33; Mo. IV, 53; Neb. III, 15; Nev. IV, 20; N. Y. II, 18 Amend.; N. C. II, 2; Pa. III, 7; Tenn. XI, 6; Tex. III, 56; Va. V, 20; W. Va. XI, 3.

7 Ark. V, 24; Colo. V, 25; Fla. V, 17; Ill. IV, 22; Ind. IV, 22; Iowa, III, 30; Mich. IV, 23; Mo. IV, 53; Neb. III, 15; Nev. IV, 20; N. J. IV, 7; N. Y. II, 18 Amend.; Or. IV, 23; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

8 Colo. V, 25; Fla. V, 17; Ill. IV, 23; Ind. IV, 22; Mo. IV, 53; Neb. III, 15; N. J. IV, 7; N. Y. II, 18 Amend.; Or. IV, 23; Tex. III, 56; W. Va. VI, 39.

9 Colo. V, 25; Fla. V, 17; Ill. IV, 22; Ind. IV, 22; Mo. IV, 53; Neb. III, 15; Nev. IV, 20; N. J. IV, 7; N. Y. II, 18 Amend.; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

10 Colo. V, 25; Fla. V, 17; Ind. IV, 22; Iowa, III, 30; Mo. IV, 53; Nev. IV, 20; Or. IV, 23; Wis. IV, 31.

Assessments.—This does not prohibit assessments on property specially benefited by a local improvement.

Goodrich v. Turnpike Co. 26 Ind. 119; Bright v. McCullough, 27 Ind. 223; Palmer v. Stump, 29 Ind. 329; Stinson v. Smith, 8 Minn. 366; Williams v. Cammack, 27 Miss. 209; Garrett v. St. Louis, 25 Mo. 505; Uhrig v. St. Louis, 44 Ibid. 458; Abbott v. Dodge Co. 8 Neb. 131; King v. Portland, 2 Or. 146; Hurford v. Omaha, 4 Neb. 356; Wright v. Boston, 9 Cush. 233; Philadelphia v. Tryon, 35 Pa. St. 401; People v. Mayor of Brooklyn, 4 N. Y. 419; Brewster v. Syracuse, 19 N. Y. 116; Howell v. Buffalo, 37 N. Y. 267; Litchfield v. Vernon, 41 N. Y. 123; Comm. v. Woods, 44 Pa. St. 113; Wray v. Mayor &c. 46 Pa. St. 365; Greensburg v. Young, 53 Ibid. 280; Stroud v. Philadelphia, 61 Ibid. 255.

11 Colo. V, 25; Fla. V, 17; Ga. III, 6; Ill. IV, 23; Ind. IV, 22; Mo. IV, 53; Neb. III, 15; Nev. IV, 20; N. Y. II, 18 Amend.; Or. IV, 23; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

12 Colo. V, 25; Fla. V, 17; N. J. IV, 7; Neb. III, 15; Pa. II, 7; Tex. III, 56; W. Va. VI, 39.

Sale of estates.—Under a constitution which allows special legislation on the sale of estates, on notice, the line which separates the legislative and judicial departments should be kept distinctly in view.

Todd v. Flournoy's Heirs, 56 Ala. 99.

13 Md. III, 33; Mo. IV, 27; Tex. III, 56; Wis. IV, 31 Amend.

14 Colo. V, 25; Md. III, 33; Mo. IV, 53; Tex. III, 56.

15 Md. III, 33.

16 Tex. III, 56.

17 "Majority"—Colo. V, 25; Mo. IV, 53.

"Sale by minors"—Fla. IV, 17; Ind. IV, 22; Md. III, 33; Mo. IV, 53; Nev. IV, 20; N. J. IV, 7; Va. V, 20; Wis. IV, 31 Amend.

18 Colo. V, 25; Mo. IV, 53.

19 Colo. V, 25; Ga. III, 6; Ind. IV, 22; . IV, 53; Neb. III, 15; N. J. IV, 7; N. Y. II, 18 Amend.; Pa. III, 7.

Special privileges.—This clause extends only to the passing of special or local laws for such purposes. (*Munn v. People*, 69 Ill. 80.) It is a limitation on the power of the legislature and not on the power of municipal corporations to designate certain streets and fixing conditions for operating a road therein. (*Chicago R. Co. v. People*, 73 Ill. 541.) So, regulating warehouses and inspection of grain is not in contravention. (*Munn v. People*, 69 Ill. 80.)

20 Colo. V, 25; Mo. IV, 53; Pa. III, 7; Tex. III, 56.

21 Colo. V, 25; Ill. IV, 22; Iowa, III, 30; Mo. IV, 53; Neb. III, 15; N. Y. II, 18 Amend.; Pa. III, 7; Tex. III, 56; W. Va. VI, 39; Wis. IV, 31 Amend.

22 N. C. II, 11.

23 Colo. V, 25; Mo. IV, 53; Neb. III, 15; N. Y. II, 18 Amend.; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

24 Colo. V, 25; Mo. IV, 53; Pa. III, 7; Tex. III, 56.

25 Colo. V, 25; Ga. III, 6; Ill. IV, 22; Mo. IV, 53; Neb. III, 15; N. Y. II, 18 Amend.; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

Ferries.—An act for the establishment of a particular ferry at a particular place is a special act, and unconstitutional.

Frye v. Partridge, 82 Ill. 267.

26 Colo. V, 25; Ill. IV, 22; Mo. IV, 53; Neb. III, 15; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

27 Colo. V, 25; Ill. IV, 22; Mo. IV, 53; Neb. III, 15; N. J. IV, 7; Pa. III, 7; Tex. III, 56.

28 Colo. V, 25; Mo. IV, 53; Tex. III, 56.

29 Colo. V, 25; Fla. V, 17; Mo. IV, 53; Neb. III, 15; N. J. IV, 7; Pa. III, 7; Tex. III, 56.

30 Colo. V, 25; Ind. IV, 22; Mo. IV, 53; Neb. III, 15; N. J. IV, 7; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

31 Ark. V, 24; Ga. III, 6; La. VII, 117; Mo. IV, 53; N. C. II, 11; Pa. III, 7; Tenn. XI, 6; Tex. III, 56.

32 Colo. V, 25; Tex. III, 56.

33 Ala. IV, 23; Ark. V, 24; Colo. V, 25; Fla. V, 17; Kans. II, 17; Mo. IV, 53; Neb. III, 15; Pa. III, 7; Tex. III, 56; W. Va. VI, 39.

Construction.—This clause recognizes the necessity for special legislation, and seeks merely to limit, not to prohibit. (*State v. Hitchcock*, 1 Kans. 178.) As to whether a general law can be made applicable, or whether a special act is necessary, in a given case, the legislature is the exclusive judge. (*St. Louis v. Shields*, 62 Mo. 247.)

§ 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

Ala. IV, 26; Colo. XVIII, 2; Ga. I, 23; Ill. IV, 27; Ind. XV, 8; Iowa III, 28; Neb. III, 21; Nev. IV, 24; Tex. XII, 36; W. Va. VI, 36.

"Stock-jobbing"—See Act of Parl. 7 Geo. II, chap. 8, sec. 1.

See Ark. XIX, 14; Fla. V, 20; Kans. XV, 3; Md. III, 36; Mich. IV, 26; Minn. IV, 31; Miss. XII, 15; Mo. XIV, 10; N. J. IV, 7; Ohio, XV, 6; Or. XV, 4; R. I. IV, 12; S. C. XIV, 2; Tenn. XI, 5; Va. V, 18; Wis. IV, 24.

Lotteries.—Every scheme for the distribution of prizes by chance, is a lottery; and that every ticket-holder receives something, does not render it less so. (*Randle v. State*, 42 Tex. 580.) The sale of a lottery ticket is in violation of this provision and illegal, and equity will not interfere. (*Kitchen v. Greenabaum*, 61 Mo. 110.)

§ 27. When a congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more Congressmen; but the Legislature may divide any county, or city and county, into as many congressional districts as it may be entitled to by law. Any county, or city and county, containing a population greater than the number required for one congressional district, shall be formed into one or more congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached by compact adjoining assembly districts, to a contiguous county or counties, and form a congressional district. In dividing a county, or city and county, into congressional districts, no assembly district shall be divided so as to form a part of more than one congressional district, and every such congressional district shall be composed of compact contiguous assembly districts.

See Iowa III, 37; Tex. III, 12.

Assembly districts.—The legislature may change assembly districts so as to join two counties in one district. *People v. Hill*, 7 Cal. 97.

§ 28. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

Ala. IV, 22; Iowa, III, 38; Minn. IV, 30; Neb. III, 8; N. C. II, 11; Tenn. IV, 4; Wis. IV, 36.

§ 29. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State.

Ala. IV, 32; Ark. V, 30; Colo. V, 32; Ill. IV, 16; Pa. III, 15; W. Va. VI, 42.

§ 30. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.

See Ala. IV, 34; Colo. V, 34; Ind. I, 6; Md. III, 54; Mich. IV, 40; Mo. II, 7; N. J. I, 19; Pa. III, 17.

§ 31. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city,

township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

Ala. IV, 55; Colo. XI, 2; Ill. IV, 30; Minn. IX, Amend.; Mo. IV, 45; Neb. XII, 3; N. J. I, 19; N. Y. VIII, 10, 11, Amend.; Ohio, VIII, 4; Pa. IX, 7; Tenn. II, 29; Tex. III, 50.

Prohibition.—This section prohibits corporate towns from loaning their credit,¹ or making donations or subscriptions to railroad stock,² and embraces donations and subscriptions voted prior to the adoption of the constitution.³ It was intended to prevent any city, county, etc., from becoming jointly interested as a stockholder with any company, and from appropriating, etc., money, or loaning its credit to any corporation or individual.⁴ This provision is prospective only, and does not repeal a statute in force at the time of its adoption.⁵ In the absence of a constitutional prohibition the legislature may authorize a municipal corporation to subscribe to railroad stock, borrow money, and levy taxes,⁶ and an act authorizing subscription to railroad stock, and submission to the people, would be constitutional.⁷ Where the vote was had and subscription made prior to the adoption of the new constitution, the old constitution must govern;⁸ but the legislature cannot render a void election and subscription valid.⁹ An act authorizing a tax for the payment of

bounties to volunteers to fill an impending draft is not forbidden by this section.¹⁰

- 1 St. Louis Co. Ct. v. Griswold, 58 Mo. 175.
- 2 People v. Dupuyt, 71 Ill. 651.
- 3 Chicago &c. R. R. Co. v. Pinckney, 74 Ill. 277.
- 4 Murphy v. Kelly, 5 Abb. N. C. 385; Hetfield v. Fort Edward, 70 N. Y. 28; Horton v. Town of Thompson, 71 N. Y. 513; Pennsylvania R. R. Co. v. Philadelphia, 47 Pa. St. 189; Wheeler v. Philadelphia, 77 Pa. St. 328.
- 5 Indiana Co. v. Agricultural Soci. 85 Pa. St. 359.
- 6 San Antonio v. Jones, 28 Tex. 19.
- 7 Hill v. Commrs. of Forsythe, 67 N. C. 337; Powers v. Inferior Court, 23 Ga. 65.
- 8 Decker v. Hughes, 68 Ill. 33.
- 9 Marshall v. Silliman, 61 Ill. 218; Wiley v. Silliman, 62 Ibid. 170.
- 10 Speer v. School Directors, 50 Pa. St. 150.

§ 32. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

Ala. IV, 29; Ark. V, 27; Colo. V, 28; Ill. IV, 19; Mo. IV, 48; N. Y. X, 9, Amend.; Ohio, II, 29; Pa. III, 11; Tex. III, 53; W. Va. VI, 38.

§ 33. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage, in which there is a public use; and —

where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

Ala. IV, 32.

§ 34. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

§ 35. Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony;¹ and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, who shall be influenced in his vote or action upon any matter pending before the Legislature by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward, or promise of fa-

ture reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.²

1 Pa. III, 30; Tex. XVI, 41.

2 Pa. III, 32.

See Ala. IV, 40; Ark. V, 35; Colo. V, 40; Pa. III, 29-32; Tex. XVI, 41.

ARTICLE V.

EXECUTIVE DEPARTMENT.

1. Executive power vested in governor.
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§ 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

Fla. VI, 1; Iowa, IV, 1; La. III, 48; Mo. V, 5; Nev. V, 1; Pa. IV, 2; S. C. III, 1.

See Ala. V, 2; Ark. VI, 2; Colo. IV, 2; Conn. IV, 1; Del. III, 1; Ga. IV, 1; Ill. V, 6; Ind. V, 1; Kans. I, 2; Ky. III, 1; Me. V. Pt. I, 1; Md. II, 1; Mass. II, sec. I, 1; Mich. V, 1; Miss. V, 1; Neb. V, 6; N. H. Pt. II, 41; N. J. V, 1; N. Y. IV, 1, Amend.; N. C. III, 1; Ohio, III, 5; Or. V, 1; R. I. VII, 1; Tenn. III, 1; Tex. IV, 1; Vt. VIII, Amend.; Va. IV, 1; W. Va. VII, 5.

§ 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the first Monday after the first day of January subsequent to his election, and until his successor is elected and qualified.

Kan. I, 1; Nev. V, 2; Pa. IV, 2; Va. VI, 22.

See Ala. V, 3; Conn. IV, 2; Del. III, 2; Fla. VI, 2; Iowa, IV, 2; Ky. III, 2; La. III, 4; Me. V, Pt. I, 2; Md. II, 2; Mass. II, sec. I, 1; Mich. V, 3; Miss. V, 2; N. J. V, 2; N. Y. IV, 3; Or. V, 4; S. C. III, 2; Tenn. III, 2; Va. IV, 2; Wis. V, 3.

Tenure of office.—The governor holds office until his successor is elected and qualified.

State v. Robinson, 1 Kan. 17; *Ex parte Lawhorne*, 18 Gratt. 85.

§ 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding his election, and attained the age of twenty-five years at the time of such election.

See Ark. VI, 5; Colo. IV, 4; Conn. IV, 1; Del. III, 4; Fla. VI, 3; Ga. IV, 1, 3; Ill. V, 5; Ind. V, 7; Iowa, IV, 6; Ky. III, 4; La. III, 49; Me. V, Pt. I, 4; Md. II, 5; Mich. V, 2; Miss. V, 3; Mo. V, 5; Neb. V, 2; Nev. V, 3; N. H. Pt. II, 41; N. J. V, 4; N. Y. IV, 2, Amend.; N. C. III, 2; Or. V, 2; Pa. IV, 5; S. C. III, 3; Tenn. III, 3; Va. IV, 3; W. Va. VII, 4; Wis. V, 2.

§ 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in the presence of both Houses of the Legislature.¹ The person having the highest number of votes shall be Governor; but, in case any two or more have an equal and the highest number of votes, the Legislature shall, by

joint vote of both Houses, choose one of such persons so having an equal and the highest number of votes for Governor.²

1 Ind. V, 4; Iowa, IV, 3; Tex. IV, 3.

2 Ark. VI, 4; Ind. V, 4; Iowa, IV, 4; La. III, 48; Mich. V, 4; Neb. V, 3; N. J. V, 2; N. Y. IV, 3; Ohio, III, 3; Or. V, 5; Pa. IV, 2; Tenn. III, 2; Tex. IV, 3; Va. IV, 2; W. Va. VII, 3; Wis. V, 3.

And see Ala. V, 4; Colo. IV, 3; Del. III, 2; Ill. V, 4; Kan. I, 2; Me. V, Pt. I, 3; Md. II, 3; Minn. V, 2; Miss. V, 2; Mo. V, 3; Nev. V, 4; N. C. III, 3; S. C. III, 4; Vt. IX, Amend.

§ 5. The Governor shall be Commander-in-Chief of the militia, the army and navy of this State.

Iowa, IV, 7; Mo. V, 7; Neb. V, 14; N. C. III, 8; Pa. IV, 7; W. Va. VII.

And see Ala. V, 18; Ark. VI, 6; Colo. IV, 5; Conn. IV, 5; Del. III, 7; Fla. VI, 4; Ga. IV, 2; Ill. V, 14; Ind. V, 12; Ky. III, 8; La. III, 59; Me. V, Pt. I, 7; Md. II, 8; Mass. II, sec. 1, 7; Minn. V, 4; Miss. V, 5; Nev. V, 5; N. H. Pt. II, 51; N. J. V, 6; N. Y. IV, 4, Amend.; Ohio, III, 10; Or. V, 9; R. I. VII, 3; S. C. III, 10; Tenn. III, 5; Tex. IV, 7; Wis. V, 4.

§ 6. He shall transact all executive business with the officers of government, civil and military,¹ and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.²

1 Fla. VI, 5; Iowa, IV, 8; Nev. V, 6; Vt. Pt. II, 11.

2 Ala. V, 6; Ark. VI, 7; Colo. IV, 8; Conn. IV, 6; Del. III, 10; Iowa, IV, 8; Kan. I, 4; Ky. III, 11; La. III, 62; Mich. V, 5; Miss. V, 6; Neb. Exec. 7; Nev. V, 6; N. C. III, 7; Ohio, III, 6; Pa. IV, 10; S. C. III, 14; Tenn. III, 18; Tex. III, 26; Va. IV, 6; W. Va. V, 4; Wis. V, 4.

And see Ind. V, 15; Me. V, Pt. I, 10; Md. II, 18; Minn. V, 4; N. Y. IV, 4, Amend.; Or. V, 13.

Executive powers.—In the absence of statutory regulations, the governor has full power to protect public property.¹ He alone may issue a warrant for the arrest of a fugitive from justice.² The powers and duties expressly given to the executive department are free from interference of the other branches of government.³ The governor is the sole judge of what official communications may be revealed, and of what his official duties are,

and when they are to be performed.⁴ He and his subordinates and agents are exempt from the process of courts while engaged in their official duties.⁵

- 1 Stephenson v. Little, 10 Mich. 433.
- 2 Commonwealth v. Hall, 75 Mass. 262.
- 3 Attorney-General v. Brown, 1 Wis. 513. See *ante*, Art. III, note.
- 4 Hartranft's Appeal, 85 Pa. St. 433.
- 5 Hartranft's Appeal, 85 Pa. St. 433.

§ 7. He shall see that the laws are faithfully executed.

Ala. V, 8; Ark. VI, 7; Colo. IV, 2; Conn. IV, 9; Del. III, 13; Fla. VI, 5; Ill. V, 6; Ind. V, 16; Iowa, IV, 9; Kans. I, 3; Ky. III, 14; La. III, 65; Me. Pt. I, 12; Md. II, 9; Mich. V, 6; Minn. V, 4; Miss. V, 9; Mo. V, 6; Neb. V, 6; Nev. V, 7; N. J. V, 6; N. C. III, 7; Ohio, III, 6; Or. V, 10; Pa. II, 13; R. I. VII, 2; S. C. III, 12; Tenn. III, 10; Tex. IV, 10; Vt. Pt. II, 11; Va. IV, 5; W. Va. VII, 5; Wis. V, 5.

§ 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

Iowa, IV, 10; Md. II, 10; Mo. V, 11.

And see Ark. VI, 23; Ind. V, 18; Kans. I, 14; Ky. III, 9; La. III, 61; Minn. V, 4; Miss. V, 13; Neb. V, 10; Nev. V, 8; N. J. V, 12; Or. V, 16; R. I. VII, 5; Tenn. III, 14; Tex. IV, 12; W. Va. VII, 9.

Power to fill vacancies.—This section applies only to those cases of vacancies for filling which no other mode is provided,¹ in which cases the power is given to the governor alone, and that, whether the legislature is in session or not.² The power to fill a vacancy and the power to fill an office are distinct in their nature.³ Where the constitution provides for an election to fill a vacancy, the governor cannot appoint.⁴ It applies only to vacancies occurring when the original appointing power cannot act, and is limited by the period when it can act.⁵ The governor has no power, under this section, when a person in possession of the office expressly authorized by statute or the constitution to discharge its duties temporarily, until the power upon whom the duty of election or appointment is devolved can act.⁶ The governor may fill

all offices in the State, unless otherwise provided in the constitution or statutes.⁷ If appointment to office is vested in the governor, with the advice and consent of the senate, and the term of the incumbent expires during a recess of the legislature, and the governor appoints a successor, such appointee has its right to hold the office for the full term, subject only to be defeated by the non-concurrence of the senate.⁸ Whether a failure to elect a successor leaves an office vacant at the expiration of the term, considered, but not fully decided in.⁹ The failure to qualify creates no vacancy in the office; it is only in cases where there is no incumbent to hold over that the law permits the executive to appoint.¹⁰ An officer elected by the people, holding over his regular term on account of the failure of his successor to qualify, holds over until the place is filled at the next general election.¹¹ An appointee to fill a vacancy holds till the next regular election.¹² An appointment by the governor is not an election.¹³ The power to fill a vacancy occurring under the old constitution cannot be exercised after the new constitution goes into effect.¹⁴ The delivery of a commission by the governor completes the appointment to fill a vacancy created during the recess of the legislature, and this section does not apply.¹⁵ The executive has authority to revoke a proclamation for election to fill a vacancy, whether the revocation be by the same person who issued the proclamation or not.¹⁶ Where the term of an appointee is not regulated by law, he is removable at the governor's pleasure;¹⁷ but the governor cannot exercise the power of removal in cases where the tenure is defined;¹⁸ as members of police boards.¹⁹ The governor is not authorized to fill a vacancy in the office of major-general of the national guard during a recess of the senate without its consent, in time of peace.²⁰ The appointment to fill a vacancy in the office of state librarian is in the board of trustees and not in the governor.²¹ The right of appointment to fill the vacancy in a county office extends only to the period between the death, resignation, or removal of the incumbent and the beginning of the new term by regular succession.²² The governor has no authority to issue a commission pending a contest for the office.²³ The authority of the governor to fill a vacancy is not judicial, but is subject to review by the courts.²⁴ The authority conferred on the governor to fill a vacancy confers no judicial authority.²⁵ "Until next regular election" means until the next regular election for the office in which a vacancy has occurred.²⁶

- 1 *Wetherbee v. Cazneau*, 20 Cal. 503.
- 2 *Nichols v. McKee*, 68 N. C. 429.
- 3 *Aylett v. Langdon*, 8 Cal. 1.
- 4 *People v. Lord*, 9 Mich. 227.
- 5 *Casserly v. Fitch*, 1 Cal. 519.
- 6 *People v. Tilton*, 37 Cal. 614.
- 7 *Davis v. State*, 7 Md. 151.
- 8 *People v. Mizner*, 7 Cal. 519.
- 9 *People v. Parker*, 37 Cal. 633.
- 10 *Melony v. Whitman*, 10 Cal. 38.
- 11 *Battle v. McIver*, 63 N. C. 457.
- 12 *Murray v. Ayres, Minor*, 323.
- 13 *Speed v. Crawford*, 3 Met. (Ky.) 207.
- 14 *State v. McAdoo*, 33 Mo. 453.
- 15 *Wetherbee v. Cazneau*, 20 Cal. 503.
- 16 *Tennant's Case*, 3 Neb. 423.
- 17 *Keenan v. Perry*, 24 Tex. 253.
- 18 *People v. Jewett*, 6 Cal. 291. And see *Cantwell v. Owens*, 14 Md. 215.
- 19 *Speed v. Crawford*, 3 Met. (Ky.) 207.
- 20 *People v. Mollineaux*, 53 Barb. 9.
- 21 *People v. Stratton*, 23 Cal. 382.
- 22 *Comm. v. King*, 85 Pa. St. 103.
- 23 *In re Barber*, 86 Pa. St. 392.
- 24 *State v. Seay*, 64 Mo. 89.
- 25 *State v. Seay*, 64 Mo. 89.
- 26 *Cloud v. Wilson*, 72 N. C. 155.

§ 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

Ala. V, 10; Ark. VI, 19; Del. III, 12; Ga. IV, 2, III; Kans. I, 5; Iowa, IV, 11; Me. V, Pt. I, 13; Md. II, 15; Mich. V, 7; Minn. V, 4; Neb. V, 8; N. Y. IV, 4; Ohio, III, 8; Or. V, 12; Pa. IV, 12; R. I. VII, 7; S. C. III, 13; Wis. V, 4.

And see Colo. IV, 9; Fla. VI, 8; Ill. V, 8; Ky. III, 13; La. III, 64; Mo. V, 9; Nev. V, 9; N. J. V, 6; N. C. III, 9; Tenn. III, 9; Tex. IV, 8; W. Va. VII, 7.

- 2 Ark. VI, 19; Colo. IV, 9; Pa. III, 35; Tex. III, 4.

Extraordinary occasions.—The governor is the sole judge of the extraordinary occasion for convening the legislature by proclamation.¹ In special sessions the legislature can only legislate on subjects for which it was specially convened, and such as are called to their attention by the governor.²

1 *Whiteman v. Wilmington & S. R. R. Co.* 2 Har. 514.

2 *Jones v. Theall*, 3 Nev. 233.

§ 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

Ala. V, 7; Kan. I, 5; Minn. V, 4; Neb. V, 7; N. Y. IV, 4; Ohio, III, 7; Pa. IV, 11; Va. IV, 5; W. Va. VII, 6; Wis. V, 4.

And see Ky. III, 12; La. III, 63; Me. V, Pt. I, 9; Md. II, 19; Mich. V, 8; Miss. V, 8; Mo. V, 10; Nev. V, 10; Or. V, 11; S. C. III, 15; Tenn. III, 11.

§ 11. In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

Ala. V, 9; Conn. IV, 7; Iowa, IV, 13; Kan. I, 6; Mass. II, sec. I, 6; Me. V, Pt. I, 13; Miss. V, 7; Neb. V, 9; Nev. V, 11; Ohio, III, 9; R. I. VII, 6; Tex. IV, 9.

§ 12. No person shall, while holding any office under the United States or this State, exercise the office of Governor except as hereinafter expressly provided.

Iowa, IV, 14; Nev. V, 12; Pa. IV, 6. See N. J. V, 8; Ohio, III, 14; Or. V, 3; Tenn. III, 13.

§ 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

Iowa, IV, 20; Kan. I, 8; Miss. V, 11; Mo. V, 20; Neb. V, 23; Nev. V, 15; N. C. III, 18; Ohio, III, 12; Pa. IV, 22; S. C. III, 18; Tenn. III, 15; Tex. IV, 19.

§ 14. All grants and commissions shall be in the name and by the authority of the People of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Ala. V, 13; Ark. VI, 17; Conn. IV, 11; Fla. V, 13; Ind. XV, 6; Iowa, IV, 21; Kan. I, 9; La. III, 72; Me. IX, 3; Md. IV, Pt. I, 13; Mass. Pt. II, Ch. VI, 4; Mich. V, 19; Miss. V, 12; Mo. V, 23; Neb. Exec. 14; Nev. V, 16; N. H. Pt. II, 86; N. J. VIII, 3; N. C. III, 16; Ohio, III, 13; Or. V, 13; Pa. IV, 22; R. I. VII, 8; S. C. III, 19; Tenn. III, 16; Tex. IV, 20; Vt. Pt. II, 23; Va. IV, 7; W. Va. II, 8.

Commissions.—A commission issued by the executive is *prima facie* evidence of the right to the office, until a judicial ascertainment that a vacancy did not exist.¹ The governor has no power to revoke a commission to an officer not removable at his pleasure.² He has no authority to issue a commission pending a contest for the office.³

1 Hill v. State, 1 Ala. 559.

2 Ewing v. Thompson, 43 Pa. St. 372.

3 Case of Barber, 86 Pa. St. 392.

§ 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of eligibility shall also be the same.¹ He shall be President of the Senate, but shall have only a casting vote therein.² If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tempore of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

1 Ala. VI, 2; Conn. IV, 3; Amend. IV; Fla. V, 14; Ill. VI, 3; Iowa, IV, 3; Kan. I, 12; Ky. III, 15; La. III, 53; Mich. V, 23; Miss. V, 14; Mo. V, 15; Nev. V, 17; N. Y. IV, 7; N. C. III, 11; Ohio, III, 16; R. I. IX, 5; S. C. III, 5; Tex. IV, 16; Vt. Amend. XXIV, 7; Va. IV, 9; Wis. V, 8.

2 Fla. V, 14; Nev. V, 17; N. Y. IV, 17; Wis. V, 8.

And see Mass. II, sec. II, 1; Pa. IV, 4.

§ 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

See Ky. III, 17; La. III, 53; Me. V, Pt. I, 14; Md. II, 7; Mass. II, sec. II, 3; Mich. V, 12; Miss. V, 17; Mo. V, 16; Neb. V, 16; Nev. V, 18; N. H. Pt. II, 43; N. J. V, 12; N. Y. IV, 6; N. C. III, 12; Ohio, III, 15; Or. V, 8; Pa. IV, 13; R. I. VII, 9; S. C. III, 9; Tenn. III, 12; Tex. IV, 17; Wis. V, 7.

§ 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant-Governor, and their terms of office shall be the same as that of the Governor.

See La. II, 70; Miss. V, 19; Mo. V, 21; Nev. V, 19; N. Y. V, 1; Pa. IV, 8; S. C. III, 23.

Time of election.—All elective officers connected with the executive department must be elected at the same time.

Brooks v. Melony, 15 Cal. 53, reversing in part People v. Whitman, 10 Cal. 116.

Duties of office.—Although there is no express limitation of power of the legislature as to the duties of State officers, yet a limitation is necessarily implied, and such limitation is found in the general class of duties which such officers performed in other States.¹ The legislature has a wide discretion; it may devolve on the secretary of state the performance of services foreign to the office, and may pay additional salary therefor;² so as to the attorney-general,³ or the controller;⁴ but it has no power to compel the attorney-general to perform duties of the board of examiners.⁵

1 Love v. Baehr, 47 Cal. 364.

2 Melone v. State, 51 Cal. 549; Love v. Baehr, 47 Cal. 364.

3 Love v. Baehr, 47 Cal. 364.

4 Green v. State, 51 Cal. 577.

5 Love v. Baehr, 47 Cal. 364.

§ 18. The Secretary of State shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature,¹ and shall perform such other duties as may be assigned him by law.²

1 Fla. VII, 2; Nev. V, 20; Or. VI, 2; Wis. VI, 2.

2 Ark. VI, 6; Del. III, 15; Conn. IV, 18; Ill. V, 1; Ind. VI, 1; Iowa, IV, 22; Ky. III, 2; La. III, 68; Miss. V, 19; Mo. V, 16; Nev. V, 20; Or. VI, 2; Pa. II, 18; Tenn. III, 17; Tex. IV, 21; Va. IV, 13; Wis. VI, 2.

See Ala. VI, 21; Md. II, 23.

§ 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General shall, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution,

as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly, to be allowed only during the session of the Legislature; the Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, three thousand dollars each per annum, such compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; *provided, however*, that the Legislature, after the expiration of the terms hereinbefore mentioned, may, by law, diminish the compensation of any or all of such officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. No salary shall be authorized by law for clerical service, in any office provided for in this article, exceeding sixteen hundred dollars per annum for each clerk employed. The Legislature may, in its discretion, abolish the office of Surveyor-General;¹ and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.²

¹ Ala. V, 19; Ark. VI, 1; Conn. IV, 4; Md. IX, 1; N. Y. IV, 8; N. C. III, 15; Ohio, III, 19; R. I. VII, 2; S. C. III, 13; Wis. IV, 28.

² Pa. III, 7.

Compensation applies only to those officers who receive a fixed salary from the State.¹ An act may postpone its operation until the expiration of the term of the incumbent.² These clauses should be construed together, and be interpreted to mean that until the legislature shall fix the salary, the fees of the office are not to be paid into the county treasury.³ The right to enact laws fixing the salaries or compensation of public officers and to modify them in all cases is not prohibited by the Constitution of the United States.⁴

- 1 *Milwaukee Co. v. Hackett*, 21 Wis. 612.
- 2 *Perot's Case*, 86 Pa. St. 335.
- 3 *Perot's Case*, 86 Pa. St. 335.
- 4 *State v. Smedes*, 26 Miss. 47.

§ 20. The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States.

See Mich. V, 16; Tex. IV, 6.

ARTICLE VI.

JUDICIAL DEPARTMENT.

- 1 Judicial powers.
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- 3 Election of supreme justices.
- 4 Jurisdiction of supreme court.
- 5 Superior court, jurisdiction.
- 6 Superior court, how constituted.
- 7 Superior judges, apportionment of business.
- 8 Judge may hold court in other county—*Judge pro tempore*.
- 9 Leave of absence—Limitation of time.
- 10 Justices and judges, how removed.
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- 17 Compensation of justices and judges.
- 18 Justices and judges ineligible to other offices.
- 19 Charges to juries.
- 20 Style of process.
- 21 Reporter of supreme court decisions.
- 22 Judges not to practice law.
- 23 Eligibility of justices and judges.
- 24 Condition precedent to draft of salary.

§ 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

Ill. VI, 1; Mich. VI, 1; Nev. VI 1; N. C. IV, 4; S. C. IV, 1.

Each branch of the judicial department has its functions, and each is beyond the control of either of the other departments.¹ The legislature cannot confer on one court the functions and powers which the constitution has conferred on another.² The only case where one court of concurrent jurisdiction may interfere with a judgment of the other is where the court in which the action is pending cannot afford the relief sought.³ Two or more courts may have concurrent powers over the same parties and the same subject-matter.⁴ Where courts of law and equity have concurrent jurisdiction, the judgment of the court which first acquires jurisdiction cannot be interfered with.⁵ The legislature may establish criminal courts in addition to those specified in the constitution, and give them concurrent jurisdiction with existing criminal courts.⁶ The municipal criminal court of San Francisco is a constitutional court.⁷ The legislature may establish special courts in cities and towns.⁸ Inferior courts are those whose judgments or decrees can be reversed on appeal in higher courts.⁹ The judicial system cannot be changed by action of the legislative department, except when the power to make the change is conferred by the constitution itself.¹⁰ Courts cannot transcend the authority of the law of their creation, nor can their jurisdiction be enlarged by intendment.¹¹

1 *Parsons v. Tuolumne Wat. Co.* 5 Cal. 43; *Zander v. Coe*, 5 Cal. 230.

2 *Zander v. Coe*, 5 Cal. 230. But see *Courtwright v. Bear Riv. & A. W. & M. Co.* 30 Cal. 580.

3 *Anthony v. Dunlap*, 8 Cal. 36; *Rickett v. Johnson*, 8 Cal. 34; *Chipman v. Hibbard*, 8 Cal. 268; *Phelan v. Smith*, 8 Cal. 520; *Urkfelder v. Levy*, 9 Cal. 607.

4 *Courtwright v. Bear Riv. & A. W. & M. Co.* 30 Cal. 580.

5 *Duhl v. Pacheco*, 21 Cal. 438.

6 *Comm. v. Hipple*, 62 Pa. St. 9; *March v. State*, 44 Tex. 64.

7 *Ex parte Stratman*, 39 Cal. 517; *People v. Nyland*, 41 Cal. 129.

8 *Town of Washington v. Hammond*, 76 N. C. 33; *Town of Edenton v. Wool*, 65 N. C. 373; *State v. Pender*, 66 N. C. 313.

9 *Nugent v. State*, 18 Ala. 521.

10 *Ex parte Towles*, 43 Tex. 413.

11 *Solon v. State*, 5 Tex. Ct. App. 301; *Jennings v. State*, *Ibid.* 298.

§ 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, de-

nominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writ-

ing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

The court may hear affidavits upon which it can properly determine the exercise of its jurisdiction.

Simmons v. Fisher, 46 Tex. 131.

§ 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large at the general State elections, at the times and places at which State officers are elected; and the term of office shall be twelve years, from and after the first Monday after the first day of January next succeeding their election; *provided*, that the six Associate Justices elected at

the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

Absence of judge from the State is not such a vacancy as can be supplied by the executive, and an act authorizing such appointment is unconstitutional.

People v. Wells, 2 Cal. 198; Ibid. 610.

§ 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be pro-

vided by law; also, in all criminal cases prosecuted by indictment, or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

Appellate jurisdiction.—If the constitution confers appellate jurisdiction, and no mode is provided for taking the appeal, the case may be brought up on a writ of error, or the court may frame an appropriate writ.¹ Proceedings to condemn lands for use of a railroad is a special case;² so, proceedings in divorce,³ and proceedings in election contests and insolvency cases,⁴ are special cases.⁵ The supreme court has not jurisdiction of a criminal case involving the validity of a tax, etc.⁶ The supreme court has no jurisdiction in criminal cases of a lesser grade than felony.⁷ Half pilotage is not a toll within the meaning of this section.⁸ Before the amendments to the constitution the appellate jurisdiction over money demands extended only to cases where the amount in dispute exceeded two hundred dollars,⁹ but since the amendments it has extended over cases where the amount was over three hundred dollars.¹⁰ Except as otherwise provided in this section the supreme court has appellate jurisdiction only.¹¹ It has power to make rules and regulations.¹²

1 *Ex parte Thistleton*, 52 Cal. 229; *Middleton v. Gould*, 5 Cal. 190; *Adams v. Town*, 3 Cal. 247; *S. P. & N. R. R. Co. v. Hanlon*, 24 Cal. 334.

2 *S. & C. R. R. Co. v. Galgiani*, 49 Cal. 139; *Knowles v. Yeates*, 31 Cal. 85; *Day v. Jones*, 31 Cal. 263; *Houghton's Appeal*, 42 Cal. 68.

3 *Conant v. Conant*, 10 Cal. 252; *Perry v. Ames*, 26 Cal. 387.

4 *Kohlman v. Wright*, 6 Cal. 231; *Fisk v. His Creditors*, 12 Cal. 281.

5 *Knowles v. Yeates*, 31 Cal. 82; *Dickinson v. Van Horn*, 9 Cal. 207.

6 *People v. Johnson*, 30 Cal. 98.

7 *People v. Spear*, 7 Cal. 139; *People v. Vick*, 7 Cal. 165; *People v. Applegate*, 5 Cal. 295; *People v. Fowler*, 9 Cal. 86; *People v. Cornell*, 16 Cal. 187; *People v. War*, 10 Cal. 117; *People v. Barney*, 29 Cal. 459; *People v. Johnson*, 30 Cal. 98; *People v. Jones*, 31 Cal. 565.

8 *Harrison v. Green*, 18 Cal. 94.

9 *Luther v. The Apollo*, 1 Cal. 15; *Simmons v. Brainard*, 14 Cal. 278; *Crandall v. Blen*, 15 Cal. 406; *People v. Carman*, 18 Cal. 693; *Zabriskie v. Torry*, 20 Cal. 173; *Malson v. Vaughn*, 23 Cal. 61; *Skillman v. Lachman*, 23 Cal. 199; *Meeker v. Harris*, 23 Cal. 285; *Bolton v. Landers*, 27 Cal. 106.

10 *Hopkins v. Cheeseman*, 28 Cal. 180; *Maxfield v. Johnson*, 30 Cal. 545; *Solomon v. Reese*, 34 Cal. 28.

11 *State v. Flinn*, Minor, 8.

12 *Texas Land Co. v. Williams*, 48 Tex. 602.

§ 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage, and of all such special cases and proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. They shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; *provided*, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real

estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

District courts.—Under the grant of equity jurisdiction, district courts have jurisdiction over actions to abate a nuisance;¹ so, they have the same control over the persons of minors and their estates that the chancery courts of England possess;² so, it has jurisdiction over the custody of children, alimony, etc., in a case of divorce,³ and over cases of fraud, accident, mistake, etc.,⁴ and over suits against administrators,⁵ and over claims against estates of decedents,⁶ and foreclosure of mortgages thereon,⁷ and over suits involving the legality of any tax, toll, impost, or assessment;⁸ but an action to recover the penalty for the imposing of an excessive toll is not within their jurisdiction unless the amount charged is three hundred dollars.⁹ They have jurisdiction at law where the amount in controversy, exclusive of interest, is three hundred dollars.¹⁰ The legislature may prescribe rules of procedure, by which equity jurisdiction is to be exercised.¹¹ The legislature may authorize the district judge of one district to hold a court in another district.¹² District courts have jurisdiction of actions to prevent extortion in office,¹³ and of actions against the administrator of an administrator to settle the accounts of his intestate.¹⁴ The legislature may confer jurisdiction on district courts, but cannot confer it on any tribunal or officer except those mentioned in this article of the constitution.¹⁵ The judgments of district courts can only be reversed or relieved against in the same court where rendered, or by a resort to the proper appellate tribunal.¹⁶

1 Courtwright v. Bear Riv. & A. W. & M. Co. 30 Cal. 576; Yolo Co. v. Sacramento, 36 Cal. 193; People v. Moore, 29 Cal. 427.

2 Wilson v. Roach, 4 Cal. 366.

3 Bennett v. Southard, 35 Cal. 691.

4 People v. Houghtaling, 7 Cal. 348.

- 5 *People v. Houghtaling*, 7 Cal. 348; *Gurnee v. Maloney*, 38 Cal. 84.
- 6 *Hentsch v. Porter*, 21 Cal. 555.
- 7 *Fallon v. Butler*, 21 Cal. 24; *Willis v. Farley*, 24 Cal. 491.
- 8 *People v. Mier*, 24 Cal. 61; *Bell v. Crippin*, 28 Cal. 327.
- 9 *Brown v. Rice*, 52 Cal. 489.
- 10 *Solomon v. Reese*, 34 Cal. 32.
- 11 *Ex parte Harker*, 49 Cal. 465.
- 12 *People v. McCauley*, 1 Cal. 379.
- 13 *Matter of Marks*, 45 Cal. 200.
- 14 *Bush v. Lindsay*, 44 Cal. 121.
- 15 *Spencer Creek Wat. Co. v. Vallejo*, 48 Cal. 70.
- 16 *Blythe v. Deaton*, 48 Tex. 198.

County courts.—The old constitution left to the legislative will to determine whether jurisdiction over any given special case shall be vested in the county court or some other court.¹ They have common-law jurisdiction in cases of naturalization of foreigners;² so, they have jurisdiction of actions of unlawful detainer against tenants holding over,³ and over actions of forcible entry and unlawful detainer,⁴ and over cases of election contests,⁵ over actions to abate a nuisance and to recover damages they have no jurisdiction for damages except as an incident to their power to abate the nuisance.⁶ Jurisdiction for condemnation of water is a special case, but no jurisdiction exists in county courts unless specially conferred by the legislature;⁷ so, as to condemnation of land for public use;⁸ so, as to proceedings to determine the right to town lots.⁹ County courts are courts of general criminal jurisdiction.¹⁰ This section authorizes the absolute right of appeal from the municipal criminal court, and confers on the county court jurisdiction when the legislature shall provide the mode and means of appeal.¹¹ The county court has the sole appellate jurisdiction in all cases arising in the justices' courts,¹² and although they are authorized to try the case *de novo*, it is still an exercise of appellate and not original jurisdiction.¹³

1 *Matt. of Marks*, 45 Cal. 200; *Spencer Creek W. Co. v. Vallejo*, 48 Cal. 70; *Jacks v. Day*, 15 Cal. 91.

2 *Matt. of Conner*, 39 Cal. 98.

3 *Caulfield v. Stevens*, 28 Cal. 118; *Courtwright v. Bear Riv. & A. W. Co.* 30 Cal. 573; *Stoppelkamp v. Mangeot*, 42 Cal. 325; *Johnson v. Chely*, 43 Cal. 300.

4 *Caulfield v. Stevens*, 28 Cal. 118; *Kennedy v. Hamer*, 19 Cal. 374.

5 *Kirk v. Rhoads*, 46 Cal. 398; *Saunders v. Haynes*, 13 Cal. 145.

6 *Grigsby v. Clear Lake Wat. Co.* 40 Cal. 396; *Parsons v. Tuolumne Wat. W. Co.* 5 Cal. 43.

7 *Spencer Creek W. Co. v. Vallejo*, 48 Cal. 70.

8 S. F. & A. W. Co. 36 Cal. 639. Jurisdiction has since been conferred on district courts.

9 Ricks v. Reed, 19 Cal. 551; Ryan v. Tomlinson, 31 Cal. 11.

10 People v. Blackwell, 27 Cal. 65.

11 People v. Nyland, 41 Cal. 129.

12 People v. Fowler, 9 Cal. 85.

13 Townsend v. Brooks, 5 Cal. 52.

Probate courts.—Probate courts possess general probate jurisdiction.¹ The constitution does not confer on probate courts jurisdiction of all matters relating to the estates of deceased persons, but of such matters only as the statute directs.² They have exclusive jurisdiction in the adjustment and enforcement of expenses of administration;³ but they have no jurisdiction of proceedings to compel a guardian to advance necessary sums out of the estate for the support of his ward.⁴ Whether they have jurisdiction to specifically enforce the performance of a contract for the sale of real estate, not decided.⁵

1 Will of Bowen, 34 Cal. 688; Gurnee v. Maloney, 38 Cal. 87; Bush v. Lindsay, 44 Cal. 125.

2 Bush v. Lindsay, 44 Cal. 121.

3 Gurnee v. Maloney, 38 Cal. 85.

4 Swift v. Swift, 40 Cal. 456.

5 Treat v. De Celis, 41 Cal. 202.

County judge.—The office of county judge is not a county office so far as to authorize a board of supervisors to order a special election to fill a vacancy in such office.¹ Such an election is a special election, and the governor's proclamation is essential to its validity.² The tenure of the office is four years.³ On the organization of a new county, the act providing for the election of a county judge for two years is void *pro tanto*, and the election entitles the incumbent to the office for four years.⁴ A county judge is not the court.⁵

1 People v. Martin, 12 Cal. 409.

2 Westbrook v. Rosborough, 14 Cal. 180.

3 People v. Templeton, 12 Cal. 394; People v. Martin, 12 Cal. 409; People v. Porter, 6 Cal. 26; People v. Weller, 11 Cal. 49; Westbrook v. Rosborough, 14 Cal. 180.

4 Westbrook v. Rosborough, 14 Cal. 180. And see People v. Templeton, 12 Cal. 394.

5 Spencer Creek Wat. Co. v. Vallejo, 48 Cal. 70.

§ 6. There shall be in each of the organized counties, or cities and counties of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that until otherwise ordered by the Legislature, only one Judge shall be elected for the Counties of Yuba and Sutter, and that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court, elected in the City and County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end

of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

Election of judges.—The constitution is not self-executing. Statutory regulations are required to give it efficacy, and an election would be invalid unless made in pursuance of such regulations.¹ An election to fill a vacancy is invalid unless held under the governor's proclamation.² A judge elected to fill a vacancy is elected for the full term of six years, and this though the proclamation is for the unexpired term.³ The legislature may provide for filling the office during the interval between the day of election and the qualification of his successor, by authorizing him to hold office till his successor is elected and qualified.⁴

1 McKune v. Weller, 11 Cal. 43. And see Brodie v. Weller, 11 Cal. 77; People v. Burbank, 12 Cal. 378; Brodie v. Campbell, 17 Cal. 11.

2 McKune v. Weller, 11 Cal. 49.

3 People v. Burbank, 12 Cal. 378.

4 Brodie v. Campbell, 17 Cal. 11.

§ 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall

apportion the business among themselves as equally as may be.

§ 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do. But a cause in a Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the Court, and sworn to try the cause.

§ 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two-thirds of the members of the Senate and two-thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; *provided*, that no such reduction shall affect any Judge who has been elected.

§ 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both Houses of the Legislature, adopted by a two-thirds vote of each House. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless

the cause thereof be entered on the Journal, nor unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

§ 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of the liens nor the value of the property amounts to three hundred dollars.

Justices' courts.—A justice of the peace has no extra-territorial jurisdiction.¹ The legislature cannot confer jurisdiction *in rem* on a justices' court for the enforcement of a lien.² A limitation to an amount in controversy leaves to the legislative discretion to fix the amount within the limitation.³ The jurisdiction is determined on a money demand by the amount of the principal debt due when suit is brought.⁴ A justice of the peace has no jurisdiction of a suit on a constable's bond, the penalty of which is more than the constitutional limitation.⁵ An act may confer additional jurisdiction on the presiding justices of certain counties and prescribe the powers and

duties of officers of such courts.⁶ The State, in a criminal case before a justice of the peace, has a right of appeal as well as the defendant.⁷ The mayor of a city is not *ex officio* a justice of the peace either under a general or a special act of incorporation.⁸

1 State v. Shropshire, 4 Neb. 412.

2 Young v. Wright, 53 Cal. 407; People v. Mier, 24 Cal. 61.

3 Pearce v. Pope, 42 Ala. 319.

4 Clark v. Brown, 48 Tex. 212.

5 State v. Porter, 69 N. C. 140.

6 Orr v. Rhine, 45 Tex. 345.

7 State v. Talt, 22 Iowa, 140.

8 Bigby v. Tyler City, 44 Tex. 351; Holmes v. State, 44 Tex. 631.

§ 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

§ 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

§ 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, and shall fix by law his duties and compensation, which compensation shall not be increased or diminished during the term for which he shall have been elected. The County Clerks shall be *ex officio* Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other

business connected with the administration of justice as may be prescribed by law.

And to perform, &c.—Fla. VI, 19; Md. V, 9; Mich. X, 3; W. Va. VII, 5.

§ 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

Nev. VI, 10.

§ 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

§ 17. The Justices of the Supreme Court and Judges of the Superior Court shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the Justices of the Supreme Court shall be paid by the State. One-half of the salary of each Superior Court Judge shall be paid by the State; the other half thereof shall be paid by the county for which he is elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court Judges shall receive an annual salary of three thousand dollars each, payable monthly, except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joa-

quin, Los-Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, which shall receive four thousand dollars each.

Salaries.—Judicial salaries cannot be increased or reduced during the term of the incumbent.¹ The provisions of this section do not exempt the officers named from the necessity of an appropriation by the legislature.²

1 Johnson v. Duden, 18 Cal. 696.

2 Myers v. English, 9 Cal. 341.

§ 18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

§ 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

Ark. VII, 23; Nev. VI, 12; S. C. IV, 26; Tenn. VI, 9.

Charge to jury.—The court may instruct the jury that testimony has been introduced tending to prove a certain matter.¹ The judge cannot express an opinion upon the weight of evidence, but may state the evidence and declare the law.² The policy of this provision discussed in.³ The court should not instruct the jury on controverted facts, nor upon the weight of evidence.⁴ It is error in a court to charge a jury that the existence of a fact raises a presumption of the existence of another fact.⁵

1 People v. Vasquez, 49 Cal. 560.

2 People v. King, 27 Cal. 509; Miller v. Stewart, 24 Cal. 505; Pico v. Stevens, 18 Cal. 376; People v. Ybarra, 17 Cal. 166; People v. Dick, 34 Cal. 663; Ibid. 23 Cal. 213; Ibid. 34 Cal. 663.

3 People v. Taylor, 36 Cal. 255.

4 People v. Walden, 51 Cal. 588.

5 McNeill v. Barney, 51 Cal. 603.

§ 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

Style of process.—The legislature may enact that suits for violation of a city ordinance shall be prosecuted in the name of the people.

Pillsbury v. Brown, 47 Cal. 478.

§ 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

See Ala. VI, 22; Ark. VII, 7; Kans. III, 4; Neb. VI, 8; S. C. IV, 7.

§ 22. No Judge of a Court of record shall practice law in any Court of this State during his continuance in office.

Ala. VI, 20.

§ 23. No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State.

Col. VI, 10.

§ 24. No Judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless he shall take and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his Court remains undecided that has been submitted for decision for the period of ninety days.

ARTICLE VII.

PARDONING POWER.

§ 1. The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.¹ Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve.² The Governor shall communicate to the Legislature, at the beginning of every session,³ every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, the date of the pardon or reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of felony, unless upon the written recommendation of a majority of the Judges of the Supreme Court.

¹ Ark. VI, 9; Mich. V, 11; Mo. V, 6; N. Y. IV, 5; N. C. III, 6; Wis. V, 6.

² Ala. V, 11; Ark. VI, 9; Fla. V, 11; Ind. V, 17; Iowa, IV, 16; Mich. V, 11; Neb. V, 13; N. Y. IV, 5; Ohio, III, 11; Or. V, 14; Wis. V, 6.

³ Fla. V, 11; Nev. V, 13.

See Del. III, 9; Ga. IV, 2 (2); Ill. V, 13; Kans. I, 7; Ky. III, 10; La. III, 53; Me. V, Pt. 1, 11; Md. II, 20; Mass. Pt. II, Ch. 2, 8; Minn. V, 4; Miss. V, 10; N. H. Pt. 2, 52; N. J. V, 10; Pa. IV, 9; R. I. Amend. II; S. C. III, 11; Tenn. III, 6; Tex. IV, 11; Vt. Amend. VIII; Va. IV, 5; W. Va. VII, 11.

Pardon.—The governor may pardon as well before as after trial.¹ or may grant a conditional pardon.² His power to reprieve does not depend on his constitutional power to pardon, the designation of the time for execution being no part of the sentence.³ A pardon must be proved by the production of the warrant itself, or its loss must be accounted for.⁴ If a pardon be obtained by fraud it may be revoked before actual delivery.⁵ A pardon is a release of all fines or imprisonment for the offense;⁶ but not of costs,⁷ and of fines and penalties, such only as are or were payable to the State.⁸ A pardon may remit a forfeited recognizance, after judgment, for the use of the county.⁹ The pardoning power has no authority to decree a repayment of a fine;¹⁰ and without words of restitution a pardon does not restore forfeited estates.¹¹ The general assembly can alone restore the privilege of voting to one convicted of an infamous crime.¹² The pardoning power is lodged in the executive.¹³ Delivery is essential to give effect to a pardon.¹⁴

1 Hatzfield v. Gulden, 7 Watts, 152; York Co. v. Dalhousie, 45 Pa. St. 372; Comm. v. Hilchman, 46 Ibid. 357.

2 Howell's Case, 8 Watts & S. 197; S. C. v. Smith, 1 Ball. 283; S. C. v. Addington, 2 Ibid. 516; People v. Potter, 1 Parker, Cr. C. 47; Ex parte Wells, 18 How. 314.

3 Ex parte Howard, 17 N. H. 545.

4 Spalding v. Saxton, 6 Watts, 338. And see Comm. v. Ohio & c. R. R. Co. 1 Grant, 329.

5 Ex parte De Puy, 3 Ben. 307; Comm. v. Ahl, 43 Pa. St. 53.

6 Cope v. Comm. 28 Pa. St. 297; Comm. v. Shussler, 2 Phila. 256.

7 Ex parte McDonald, 2 Whart. 440; Schuykill Co. v. Relfsnyder, 46 Pa. St. 446. But see Comm. v. Ahl, 43 Ibid. 53.

8 Shoop v. Comm. 3 Pa. St. 126.

9 Comm. v. Denniston, 9 Watts, 142.

10 Cook v. Middlesex, 3 Dutch. 637.

11 Aldrich v. Jessup, 3 Grant, 158.

12 Opin. of Judges, 4 R. I. 533.

13 Indiana v. Farley, 8 Blackf. 229; U. S. v. Harris, 1 Abb. U. S. 116; N. C. v. Williams, 1 Nott & McC. 26; The Hollen, 1 Mason, 431; Case of Dixon, 3 Opin. Att. Gen. 622.

14 Matter of DePuy, 3 Ben. 320; Comm. v. Halloway, 41 Pa. St. 210. As to the effect of a pardon, see Sprott v. U. S. 20 Wall. 468; Carlisle v. U. S. 16 Wall. 151; Armstrong v. U. S. 13 Wall. 154; U. S. v. Klein, 13 Wall. 128; Pargoud v. U. S. 13 Wall. 156; U. S. v. Padelford, 9 Wall. 581; U. S. v. Athen's Armory, 2 Abb. U. S. 148.

ARTICLE VIII.

MILITIA.

- § 1. Organization and calling forth of.
§ 2. Device, banner, or flag to be used.

§ 1. The Legislature shall provide, by law, for organizing and disciplining the militia, in such manner as it may deem expedient, not incompatible with the Constitution and laws of the United States.¹ Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.²

1 Ark. XI, 2; Kans. VIII, 2; Mich. XVII, 2.

2 Ill. V, 14; Ind. V, 12; Kans. VIII, 4; Mich. V, 4; Minn. V, 4; Nev. XII, 2; Ohio, IX, 4; Or. V, 9; Tex. VII, 1.

See Ala. XI; Colo. XVII; Fla. XII; Ga. VIII; Ill. XII; Ind. XII; Iowa, VI; Ky. VII; La. VIII; Me. VII; Amend. X; Md. IX; Mich. XVII, Amend. I; Minn. XII; Miss. IX; Mo. XIII; Neb. XIII; N. J. VII; N. Y. XI; N. C. XII; Or. X; Pa. XI; S. C. XIII; Tenn. VIII; Va. IX.

§ 2. All military organizations provided for by this Constitution, or any law of this State, and receiving State support, shall, while under arms either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California.

ARTICLE IX.

EDUCATION.

1. Promotion of intellectual improvement.
2. Superintendent of public instruction.
3. County superintendents of schools.
4. School funds, source and origin, and how appropriated.
5. System of common schools to be provided.
6. School system, what to include.
7. Text books, who to adopt—Local boards of education.
8. Sectarianism prohibited.
9. University fund, creation, management, and application of.

§ 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

§ 2. A Superintendent of Public Instruction shall, at each gubernatorial election after the adoption of this Constitution, be elected by the qualified electors of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday after the first day of January next succeeding his election.

See Ala. XII, 7.

A superintendent of public instruction is an executive officer.

Willis v. Owen, 43 Tex. 41.

§ 3. A Superintendent of Schools for each county shall be elected by the qualified electors thereof at each gubernatorial election; *provided*, that the Legislature may au-

thorize two or more counties to unite and elect one Superintendent for the counties so uniting.

§ 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or may have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

See Ala. XII, 5; N. C. IX, 4.

School fund.—Whenever the legislature raises a fund for the support of the common schools, it cannot, by contemporaneous or subsequent legislation, divert the fund to a different purpose.

Crosby v. Lyon, 37 Cal. 243.

§ 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

Delegation of powers.—The legislature may grant power to municipal corporations to levy a tax in aid of such system within their several territorial limits.¹ A delegation of powers for the support and maintenance of common schools can only be made to the local boards, etc., and any other powers exerted to this end must be exerted directly by the legislature.²

1 Board of Education v. Barlow, 49 Ga. 232.

2 Willis v. Owen, 43 Tex. 41.

§ 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools.

§ 7. The local Boards of Education, and the Boards of Supervisors, and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools within their respective jurisdictions; the text-books so adopted shall continue in use for not less than four years; they shall also have control of the examination of teachers and the granting of teachers' certificates within their several jurisdictions.

Col. IX, 16. For amendment of § 7, 1885, see p. 115.

§ 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denomi-

national doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

§ 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic Act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several Acts amendatory thereof), subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs; *provided*, that all the moneys derived from the sale of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two (and the several Acts amendatory thereof), shall be invested as provided by said Acts of Congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one College of Agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said Acts of Congress; and the Legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of

the funds so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. No person shall be debarred admission to any of the collegiate departments of the University on account of sex.

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

1. State prison directors, appointment and term of office.
2. Authority and duties of.
3. Power of appointment of employees.
4. Allowance for expenses.
5. Powers and duties to be regulated by law.
6. Convict labor to be regulated.

- § 1. There shall be a State Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy, occurring
- before the expiration of a term, shall hold office only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

State institutions.—The locating in a locality bidding the highest, though unwise and impolitic, is nevertheless not unconstitutional.¹ The legislature cannot authorize a municipal corporation to levy a tax for a site of a State institution.²

1 Burr v. Carbondale, 76 Ill. 435.

2 Livingston Co. v. Werder, 64 Ill. 427.

§ 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

§ 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the Prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty. All other officers and employes of the Prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

§ 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

§ 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

§ 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out

by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

ARTICLE XI.

CITIES, COUNTIES, AND TOWNS.

1. Counties as subdivisions of the State.
2. Removal of county seats.
3. New counties, establishment of.
4. County governments to be uniform, under general laws.
5. Boards of supervisors, election and appointment of.
6. Municipal corporations to be controlled by general laws.
7. City and county governments may be consolidated.
8. City charters, how framed and ratified.
9. Compensation of officers.
10. State taxes, no release or discharge from.
11. Local police, sanitary, and other regulations may be enforced.
12. Assessment and collection of taxes.
13. Powers not to be delegated to special commission, etc.
14. Inspection officers, appointment of.
15. Private property not liable for corporate debt of municipality.
16. Moneys, etc., to be deposited with treasurer.
17. Making profit out of public funds a felony.
18. Restriction on power to incur indebtedness.
19. Street improvements.

§ 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

Colo. XIV, 1; Mo. IX, 1.

Counties.—A county is strictly a political corporation, and is not designed for pecuniary profit, nor has it any powers but such as pertain to its strict municipal and public character.

Treadway v. Schwauber, 1 Dakota, 236.

§ 2. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such

removal. A proposition of removal shall not be submitted in the same county more than once in four years.

Ark. XIII, 3; Colo. XIV, 2; Ill. X, 4; Mich. X, 8; Mo. IX, 2.

§ 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand;¹ nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided.² Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.³

¹ See Ark. XIII, 1; Ill. X, 1; Md. XII, 1; Mo. X, 3; Neb. X, 1; Pa. XIII, 1; Tenn. X, 4; Tex. IX, 1.

² Ark. XIII, 4.

³ Colo. XIV, 4; Ill. X, 3.

Division of county.—New counties are not to be established so as to reduce the population or area of the old county to less than the minimum provided.¹ A law submitting the question of division and annexation of a county to the popular vote is not unconstitutional.² This provision was declared to be directory, with authority in the legislature to declare what measure of uniformity is practicable;³ and that the legislature might create a board of commissioners to ascertain and settle and report the amount due from one county to another upon any claim, and may compel the supervisors of the county indebted to levy a tax to pay the amount reported due.⁴ An act organizing a new county must provide for the election of justices of the peace.⁵ The legislature has the general power to alter the boundaries of counties, to create new ones, or to destroy a county by consolidating it with another.⁶

¹ Rumsey v. People, 19 N. Y. 41; De Camp v. Eveland, 19 Barb. 81.

² Upham v. Sutter Co. 8 Cal. 379; Blanding v. Burr, 13 Cal. 343; Hobart v. Butte Co. 17 Ibid. 23; Robinson v. Bidwell, 22 Cal. 379; People v. Nally, 49 Cal. 478.

3 *People v. Lake Co.* 33 Cal. 487.

4 *People v. Alameda Co.* 26 Cal. 641.

5 *Wright v. Adams*, 45 Tex. 134.

6 *Granville Co. v. Ballard*, 69 N. C. 19; *Mills v. Williams*, 11 Ired. 558.

§ 4. The Legislature shall establish a system of county governments which shall be uniform throughout the State; and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and, whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.

Fla. IV, 21; Kan. IX, 2; Minn. XI, 4; Mo. IX, 8; Nev. IV, 25.

Town government.—The constitution is not self-executing. Town governments must be created by statute.¹ The provision was declared to be directory, with authority to declare what measure of uniformity is practicable,² and that it does not deprive of the power to require boards of supervisors to issue and sell county bonds to raise money for the improvement of county roads.³ The legislature may create a board of commissioners to ascertain and settle the amount due from one county to another, and compel the debtor county to levy a tax to pay the same.⁴ The term "system of government" is used with reference to town organizations in their general features with those of other States.⁵ The power to make laws is in the legislature, to make by-laws for a town is in the local legislature.⁶ The creation and alteration of townships are left with the legislature.⁷ When a new town is formed, a due proportion of the debts of the old town should go with the new territory.⁸ In the absence of a constitutional limitation the legislature may create corporations in regard to towns six miles square, as well as to less territory.⁹

1 *Ex parte Wall*, 48 Cal. 279.

2 *People v. Lake Co.* 33 Cal. 487.

- 3 *People v. Supervisors*, 50 Cal. 561.
- 4 *People v. Alameda Co.* 26 Cal. 641.
- 5 *Ex parte Wall*, 48 Cal. 279.
- 6 *Ex parte Wall*, 48 Cal. 279; *Houghton v. Austin*, 47 Cal. 646.
- 7 *Grady v. Comm'rs of Lenoir*, 74 N. C. 101.
- 8 *State v. Elvins*, 3 Vroom, 362.
- 9 *Greely v. People*, 60 Ill. 19; *Lankeman v. People*, 62 Ill. 287; *Caste v. People*, 62 Ill. 287.

Power of legislature.—The legislature may at pleasure increase, restrict, or repeal the powers of a municipal corporation, saving only vested rights.¹ It may authorize a municipal corporation to pay a claim, equitable and just in itself, but which is invalid in law.¹ There is no constitutional inhibition against incorporating a portion of the inhabitants of a county as a city, or creating a county out of the territory of a city.²

1 *Blanding v. Burr*, 13 Cal. 343.

2 *People v. Hill*, 7 Cal. 97.

§ 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession.

See Colo. XIV, 15; Mich. X, 3; Neb. X, 4; Nev. XVII, 21; Ohio, X, 1.

County officers.—The legislature may confer upon the Board of Supervisors of one county the power to lay out, open, and maintain a road in another county.² When the constitution declares an office to be elective, it cannot

be filled in any other mode than that provided by the instrument itself.³ City councilmen are not legislators in the sense of constitutional privileges and immunities.⁴

1 S. & V. R. R. Co. v. Stockton, 41 Cal. 189.

2 People v. Lake County, 33 Cal. 487. And see Christy v. Board of Supervisors, 29 Cal. 3.

3 People v. Hastings, 29 Cal. 449; People v. Kelsey, 34 Ibid. 470.

4 Comm. v. Allen, 70 Pa. St. 465.

§ 6. Corporations for municipal purposes shall not be created by special laws; but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed.¹ Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith;² and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by general laws.

1 Ark. XII, 3; Colo. XIV, 13; Mo. IX, 7; N. Y. VIII, 9.

2 Colo. XIV, 14. See Ill. IV, 22.

Creation of municipal corporations.—Under the organic law the legislature has power to establish municipal corporations.¹ The power to arrange and distribute the administration of the principles of government includes this authority.² Corporate powers are the emanation from the State, granted for purposes of convenience; but such corporations are not to contravene the policy of the State or exceed the powers conferred.³ An irregularity in an election for the creation of such corporation does not render the incorporation act void.⁴ It was intended that the legislature should, by general laws, provide for the incorporation of cities, towns, and villages, or for the change or amendment of their charters, and it was not designed to repeal or change charters in force at

the adoption of the constitution.⁵ The delegation of legislative authority to municipal corporations can only be effected by general laws, but this section does not apply to legislation by municipal authority.⁶ The grant to a municipal corporation to make by-laws and ordinances is constitutional.⁷ The legislature may confer local legislative powers adequate to the purposes of their creation, such as general police powers, or the creation of tribunals as an essential necessity to the well-being of the corporation.⁸ A statute that applies to and confers general powers on all incorporate towns and cities is not inhibited,⁹ but a statute which, by its terms, can have application to but one county, although purporting to be a general law, is a special legislation.¹⁰ The legislature may classify cities according to their population,¹¹ but designating counties as a class according to a minimum population which makes it certain that but one county can avail of benefits of the law, is an evasion of this provision.¹² A law in regard to assessment of property and levy and collection of taxes by an incorporated city is a local and special law.¹³ The legislature may delegate authority incident to municipal governments, to cities, but only by general law, and ordinances adopted in different municipalities may be variant in their terms, as public policy may require.¹⁴

1 Deltz v. City of Central, 1 Colo. 323.

2 Turner v. Althaus, 6 Neb. 54.

3 Weith v. Wilmington, 68 N. C. 24.

4 Carleton v. People, 10 Mich. 250.

5 Guild v. Chicago, 82 Ill. 472.

6 Covington v. East St. Louis, 78 Ill. 548.

7 State v. Noyes, 10 Fost. 279.

8 Blessing v. Galveston, 42 Tex. 641.

9 Streeter v. People, 69 Ill. 595.

10 Devine v. Cook Co. 84 Ill. 590.

11 Kilgore v. Magee, 85 Pa. St. 401. And see Wheeler v. Philadelphia, 77 Pa. St. 328.

12 Devine v. Cook Co. 84 Ill. 590.

13 People v. Cooper, 83 Ill. 585, overruling Spring v. Coll. of Olney, 78 Ill. 101.

14 Covington v. East St. Louis, 78 Ill. 548.

§ 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws

providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or Houses of Legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for the term of two years. Any vacancy occurring in the office of Supervisor, in either Board, shall be filled by the Mayor or other chief executive officer.

The charter of a city may provide for a division of taxes collected between the county and city.

Logan v. City of Lincoln, 81 Ill. 156.

§ 8. Any city containing a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members

of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each House, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city; all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at

least three-fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

Mo. IX, 16-22. For amendment of § 8, 1892, see p. 122.

City charter.—A city charter is a general law.¹ It is doubtful whether the legislature may enact in a city charter that the violation of an ordinance which the city may thereafter pass shall be a misdemeanor.²

¹ Clark v. Janesville, 10 Wis. 136.

² Pillsbury v. Brown, 47 Cal. 478.

§ 9. The compensation of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

§ 10. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

Colo. X, 8; Ill. VIII, 6; Mo. X, 9; Neb. IX, 4.

Release of indebtedness.—This section was not intended to embrace a release of claims doubtful or hazardous which the State may hold against a corporation.

Burr v. City of Carbondale, 76 Ill. 455.

§ 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sani-

tary, and other regulations as are not in conflict with general laws.

Ark. XII, 4.

General laws.—A law cannot be general in any correct sense of the term, but must be local or special, which by reason of a local option is repealed, or has its vitality suspended in one locality, but remains in full force and vigor in another, or that in the same locality is law or not law, according to the changing fancies of the local authority.¹ A city ordinance requiring payment of a license for the sale of spirituous liquors does not violate this provision.²

¹ *People v. Cooper*, 83 Ill. 565.

² *Ex parte Hurl*, 49 Cal. 557.

See *Aste*, p. 226, **LOCAL OPTION LAWS.**

§ 12. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

Neb. IX, 7.

§ 13. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with, any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

Colo. V, 35; Pa. III, 26.

Delegation of powers.—That the legislature shall not delegate to a special commission, etc., is prospective only.¹ A grant of an easement in a street made to a corporation is purely a grant of corporate powers, and cannot be made to private corporations by special act.² The legislature cannot authorize a municipal corporation to confer special franchises not common to all similar corporations under the general law.³ Where there is a grant of power in the constitution to a department of government or to a constitutional or statutory officer or tribunal, without defining the manner of its exercise, the legislature may prescribe the rule.⁴

1 Perkins v. Slack, 86 Pa. St. 270.

2 San Francisco v. S. V. W. W. 48 Cal. 493.

3 Waterloo T. Co. v. Cole, 51 Cal. 381; San Francisco v. S. V. W. W. 48 Cal. 493.

4 Austin v. Gulf C. & C. R. R. Co. 45 Tex. 234.

§ 14. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, appoint such officers.

N. Y. V, 8; Pa. III, 27; See Pinkham v. Tapscott, 17 N. Y. 141.

§ 15. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

Colo. X, 14; Mo. X, 13; Neb. IX, 7.

§ 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the Treasurer, or other legal depositary, to the credit of

such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

§ 17. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

Ark. XVI, 3; Mo. X, 17; Pa. IX, 14.

§ 18. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

Ill. IX, 12; Mo. X, 12. For amendment of § 18, 1892, see p. 127.

Construction.—This section is a restriction on legislative discretion in the authorizing of county and municipal indebtedness to aid railroad and other improvements. It fixes the boundary beyond which the legislature cannot go, but within which its authority is still supreme.¹ There is no warrant for the creation of county indebtedness beyond the limit prescribed and sanctioned by at least two-thirds of the votes cast.² and any attempt to evade

the restriction is unconstitutional and void.³ The legislature may require counties to issue bonds for the amount of its indebtedness.⁴ A county cannot ratify an act which it was not originally authorized to perform.⁵

1 *Reineman v. C. C. & B. H. R. R.* 7 Neb. 310.

2 *Reineman v. C. C. & B. H. R. R.* 7 Neb. 310.

3 *Chester & L. N. G. R. R. v. Caldwell Co.* 72 N. C. 486.

4 *Jefferson Co. v. People*, 5 Neb. 136.

5 *Treadway v. Schnauber*, 1 *Kako*. 237.

§ 19. No public work or improvement of any description whatsoever shall be done or made, in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment, in proportion to benefits, on the property to be affected or benefited, shall be levied, collected, and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed. In any city where there are no public works owned and controlled by the municipality, for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this State, shall, under the direction of the Superintendent of Streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city

and its inhabitants either with gas-light or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof.

For amendment of § 19, 1885, see p. 127.

Improvements.—Measures calculated to produce a public benefit through the medium of a corporation is within the reserved powers of a State.¹ A statute allowing a municipal corporation to set off a claim for benefits against damages is valid.² A municipal corporation may repair or build court-houses or jails.³

1 Stockton & V. R. R. Co. v. Stockton, 41 Cal. 189.

2 Baldwin v. Newark, 9 Vroom, 158; Loweree v. Newark, 9 Vroom, 151.

3 McLin v. Newbern, 70 N. C. 12.

Street assessments.—The power to levy and collect assessments for municipal improvements rests alone upon constitutional authority.¹ "Assessment" includes all the steps necessary to be taken in the legitimate exercise of the power.² The legislature may authorize cities and villages to levy a special assessment, for improvement of streets, upon property peculiarly and specifically benefited in proportion to such benefits.³ Assessments may be made against the property peculiarly benefited, but only to the extent of such peculiar benefits.⁴ The legislature may confer this power upon other municipal corporations than those designated.⁵ The foundation of the power to tax specially is the benefit conferred on the owners of the property.⁶ The act of taxation must itself distribute the burden or provide the standard by which such distribution is to be made.⁷ Legislation which provides for a fair and equal assessment of property benefited will be sustained, but not where such assessment is impossible.⁸ A local assessment for a general public benefit is unconstitutional,⁹ but the expense of improving a sidewalk may be charged wholly to the owner.¹⁰ The corporate authorities are alone entitled to judge whether extending a street is necessary or not.¹¹ An assessment on property in proportion to its frontage is not unconstitutional.¹² The frontage rule of valuation cannot be applied where the street or improvement is made through rural or suburban districts.¹³ An assignment upon adjacent lots, of their share for improvement of a street, is in

the nature of a tax, and it is in the discretion of the legislature to provide for the mode of such assessments.¹⁴ Special assessments should not exceed benefits.¹⁵

- 1 Hurford v. Omaha, 4 Neb. 347.
- 2 Hurford v. Omaha, 4 Neb. 347.
- 3 Zanesville v. Richards, 5 Ohio St. 589; Baker v. Cincinnati, 11 Ibid. 534; Bank v. H. 3 Ibid. 1.
- 4 State v. Mayor of Newark, 8 Vroom, 415.
- 5 State v. Lancaster, 4 Neb. 541, adhered to in Abbott v. Dodge Co. 8 Neb. 124. And see Harward v. St. Clair Drain Co. 61 Ill. 130; Hepler v. Drain Commrs. 53, 105; Gage v. Graham, 57 Ibid. 144; Board of Directors v. Houston, 71 Ibid. 318; People v. Highway Commrs. 15 Mich. 351; People v. Ingham Co. 20 Ibid. 95.
- 6 Wistar v. Philadelphia, 80 Pa. St. 505. See Pusey's Appeal, 83 Pa. St. 67.
- 7 State v. Hudson Av. Commrs, 8 Vroom, 10.
- 8 Ballentine's Appeal, 85 Pa. St. 163.
- 9 Lovenz's Appeal, 69 Pa. St. 352; Huldekoper v. Meadville, 83 Pa. St. 156.
- 10 State v. Mayor of Newark, 8 Vroom, 415.
- 11 Wilson v. City of Charlotte, 74 N. C. 748; Tucker v. Raleigh, 75 N. C. 267; Young v. Town of Henderson, 76 N. C. 422.
- 12 Burnet v. Sacramento, 12 Cal. 76; People v. Burr, 13 Cal. 343; Emery v. Gas Co. 28 Cal. 345; Emery v. Bradford, 29 Cal. 75; Walsh v. Matthews, 29 Cal. 123; Taylor v. Palmer, 31 Cal. 240; Crosby v. Lyon, 37 Cal. 242; Chambers v. Satterlee, 40 Cal. 497.
- 13 Seely v. City of Pittsburgh, 82 Pa. St. 360.
- 14 King v. City of Portland, 2 Oreg. 146.
- 15 Crawford v. People, 82 Ill. 557.

ARTICLE XII.

CORPORATIONS.

1. Corporations to be formed under general laws.
2. Dues to be secured by individual liability, etc.
3. Stockholders to be individually liable.
4. Corporations construed.
5. Banking prohibited.
6. Existing charters, when invalid.
7. Charters not to be extended, nor forfeiture remitted.
8. All franchises subject to the right of eminent domain.
9. Restrictions on powers of corporations.
10. Liabilities of franchise under lease or grant.
11. Corporation stock, restriction on issue of.
12. Election of directors—Cumulative or distributive votes.
13. State not to loan its credit nor subscribe to stock of corporations.
14. Corporations to have office for transaction of business in stocks.
15. Foreign corporations, conditions.
16. Corporations, where to be sued.
17. Transportation companies, rights and liabilities of.

18. Officers of corporations, restriction as to interests.
19. Free passes on railroads prohibited to State officials.
20. Fares and freights to be regulated by government.
21. Discrimination in charges by carriers forbidden.
22. Railroad districts, organization of.
23. Temporary railroad districts.
24. Legislature to pass laws to enforce this article.

§ 1. Corporations may be formed under general laws, but shall not be created by special Act.¹ All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

¹ Ill. XI, 1; Ind. XI, 13; Iowa, VIII, 1; Minn. X, 2; Neb. XI, 1; Nev. VIII, 1; N. C. VIII, 1; Ohio, XIII, 1; Or. XI, 2; S. C. XII, 1; Tex. XII, 1; W. Va. XI, 1; Wis. XI, 1.

And see Ala. XIII, 1; Ark. XII, 6; Colo. XV, 2, 3; Del. I, 17; Amend. Kans. XII, 1; Me. IV, 14, Amend.; Mich. XVI, 1; Mo. VIII, 4; N. Y. VIII, 1; Ohio, XIII, 2; Pa. XVI, 10.

Special legislation.—An act fixing water rates is unconstitutional so far as it attempts to provide a mode of charges different from that allowed other corporations under general laws.¹ A special act cannot be converted into a general act by a declaration of the legislature in another statute that it shall be so considered.² The power of the legislature to change the name of a corporation by special statute considered but not decided.³ A private corporation to supply a city with water cannot be created by special act.⁴ Exclusive franchises may be conferred by the legislature upon persons or corporations, and no restriction upon this power is imposed by the constitution, except as to the particular privileges specified therein.⁵ Corporations are created by authority of the legislature and not otherwise.⁶ To "create" means to make a charter which never existed before.⁷ This section reserves the right to impose taxes on a bank according to legislative discretion, notwithstanding a provision in the charter that the corporate stock in such bank shall not be subject to such taxation for other than State purposes;⁸ it forms a part of the contract with every corporation.⁹ The legislature is not the final judges of whether the *casus judicis* on which authority to repeal a charter is based.¹⁰ The new constitution subordinates charters thereafter granted to the power to make alterations therein.¹¹

- 1 S. V. Water Co. v. Bryant, 52 Cal. 133.
- 2 San Francisco v. S. V. W. W. 48 Cal. 493.
- 3 Pacific Bank v. De Ro, 37 Cal. 538.
- 4 San Francisco v. S. V. Wat. Wks. 48 Cal. 494, denying Cal. State Tel. Co. v. Alta Tel. Co. 22 Cal. 398.
- 5 Cal. State T. Co. v. Alta Tel. Co. 22 Cal. 398.
- 6 Franklin Br. Co. v. Wood, 14 Ga. 80.
- 7 Cleveland &c. R. R. Co. v. Erie, 27 Pa. St. 398; Moers v. Reading, 21 Id. 200.
- 8 Iron City Bank v. Pittsburgh, 37 Pa. St. 340.
- 9 Ex parte Lee's Bank, 21 N. Y. 9.
- 10 Comm. v. Pittsburgh &c. R. R. Co. 58 Pa. St. 26.
- 11 Union Pass. R. R. Co. v. Philadelphia, 83 Pa. St. 429; Rader v. S. E. Road Dist. 7 Vroom, 273.

§ 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Ala. XIII, 8; Ind. XI, 14; Kans. XII, 2; Nev. VIII, 3; N. Y. VIII, 2; N. C. VIII, 2; Ohio, XIII, 3; S. C. XII, 4.

§ 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation, or joint-stock association, during the term of office of such director or trustee.

Ill. XI, 6; Ind. XI, 6; Iowa, VIII, 9; Minn. X, 3; Neb. XI, Misc. 7; Or. XI, 3.

Personal liability.—An act authorizing the formation of corporations without attaching an individual liability to the stockholders would be void.¹ The same rate of liability must be imposed upon all stockholders, and the law must operate alike upon all corporations.² Persons contracting with a corporation may stipulate to waive the individual liability of the stockholders, and such stipulation is valid.³ This section contains apt and sufficient words, creating in themselves a right of action enforceable by the ordinary remedies under the law existing at the time of the adoption of the constitution.⁴

1 French v. Teschemaker, 24 Cal. 539.

2 French v. Teschemaker, 24 Cal. 539; same questions discussed in Robinson v. Bidwell, 22 Cal. 379.

3 French v. Teschemaker, 24 Cal. 560, per Crocker, J., in Robinson v. Bidwell, 22 Cal. 379.

4 Cummings v. Spaunhorst, 5 Mo. Ct. App. 21.

§ 4. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued, in all Courts, in like cases as natural persons.

See Ala. XIII, 12, 13; Kans. XII, 6; Mich. XV, 11; Minn. X, I; Neb. XI, Misc. 3; Nev. VIII, 5; N. Y. VIII, 3; N. C. VIII, 3; Pa. XVI, 13.

§ 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States.

Ala. XIII, 14; Ark. XII, 10; Ill. XI, 5; Ind. XI, 1; Mo. XII, 25; Nev. VIII, 6; Or. XI, 1; Wis. XI, 4.

Banking.—A corporation may be formed for the purpose of receiving deposits and loaning money, if it does not issue paper to circulate as money.

Bank of Sonoma v. Fairbanks, 52 Cal. 196.

§ 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

Ala. XIII, 2; Ark. XII, 1; Colo. XV, 1; Ill. XI, 2; Mo. XII, 1; Neb. XI, Misc. 6; Pa. XVI, 1; W. Va. XI, 3.

§ 7. The Legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

Ala. XIII, 3, 10; Ark. XVII, 8; Mo. XII, 2, 3; Pa. XVI, 2; Va. X, 21.

§ 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State.

Ala. I, 24; Ark. XVII, 9; Colo. XV, 8; Ill. XI, 14; Mo. XII, 4; Neb. XI, Misc. 6; Pa. XVI, 3; W. Va. XI, 12.

§ 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

Ala. XIII, 5; Mo. XII, 7; Pa. XVI, 6.

§ 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

§ 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

Ala. XIII, 6; Ark. XII, 8; Colo. XV, 9; Ill. XI, 13; Mo. XII, 8; Neb. XI, 5; Pa. XVI, 7; Tex. XII, 6.

This section prohibits the increase of the indebtedness of a corporation.

Ahl v. Rhoades, 84 Pa. St. 319.

§ 12. In all elections for directors or managers of corporations every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, except that members of co-operative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

Ill. XI, 3; Mo. XII, 6; Neb. XI, Misc. 5; Pa. XVI, 4; W. Va. XI, 4.

§ 13. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation.

Ala. IV, 54; Ark. XII, 7; Iowa, VII, 1; Kans. XIII, 5; Mich. XIV, 6, 8; Minn. IX, 10; Miss. XII, 5; Neb. XII, 3; Nev. VIII, 9; Or. XI, 6; Va. X, 17; W. Va. X, 6; Wis. VIII, 3. See *ante*, Art. IV, § 31.

State credit.—This section prohibits the loaning of public credit for private purposes under any circumstances,¹ but it does not prohibit the appropriation of its funds to aid a corporation in the construction of a railroad to be used for military purposes.² An imposition of a tax to aid in building a railroad in consideration of services to be rendered the State is not a gift or loan of credit.³

¹ *S. & V. R. R. Co. v. Stockton*, 41 Cal. 167; *Ramsey v. Haeger*, 76 Ill. 432.

² *People v. Pacheco*, 27 Cal. 225.

³ *People v. Pacheco*, 27 Cal. 225.

§ 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

Ark. XVII, 2; Ill. XI, 9; Mo. XII, 15; Neb. XI, 1; Pa. XVII, 2; Tex. X, 3.

§ 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.

Ark. XII, 11.

§ 16. A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.

§ 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

Ala. XIII, 21; Ark. XVII, 1; Colo. XV, 4; Ill. XI, 12; Mo. XII, 13; Neb. XI, 4; Pa. XVII, 1; Tex. X, 1, 2.

Railroads, being highways, are not for all purposes private property, but, possessing a public character, they are subject to public supervision. This section does not declare whether the crossing shall be at grade or not. That is left to legislative action and judicial supervision. *Pittsburgh & C. R. R. Co. v. S. W. Pa. R. R. Co.* 77 Pa. St. 173.

Legislative control.—A statute may regulate railroad crossings,¹ or may require them to ring a bell or sound a whistle at a crossing,² or may regulate their speed in a city,³ or may require them to erect fences and cattle-guards,⁴ or may prohibit them from carrying freight which is regarded as detrimental to public health, morals, or safety, and may make them liable as insurers of life and limb of passengers;⁵ but a statute requiring a railroad to keep flagmen where there is no unusual danger is void.⁶ An act imposing restrictions on conveyance of land to railroads impairs the obligation of the contract.⁷

1 *P. & C. R. R. Co. v. S. W. P. R. R. Co.* 77 Pa. St. 173.

2 *Galena R. R. Co. v. Appleby*, 23 Ill. 283; *Galena R. R. Co. v. Loomis*, 13 Ill. 548.

3 *Chicago & C. R. R. Co. v. Haggerty*, 67 Ill. 113.

4 *Suydam v. Moore*, 8 Barb. 358; *Waldron v. Railroad Co.* 8 Barb. 390; *New Albany & C. R. R. Co. v. Tilton*, 12 Ind. 3; *Madison & C. R. R. Co. v. Whiteneck*, 8 Ind. 217; *Ohio & C. R. R. v. McClelland*, 25 Ill. 140; *Kansas P. R. R. Co. v. Mower*, 16 Kans. 573; *Jones v. G. & C. R. R. Co.* 16 Iowa, 6; *Indianapolis R. R. Co. v. Kercheval*, 16 Ind. 84; *Nichols v. S. & C. R. R. Co.* 43 Me. 353; *Wenona & C. R. R. Co. v. Waldron*, 11 Minn. 515; *Gorman v. Pacific R. R. Co.* 26 Mo. 441; *Blair v. M. & C. R. R. Co.* 20 Wis. 254; *Pennsylvania R. R. Co. v. Riblet*, 66 Pa. 164.

5 Thorpe v. Burlington &c. R. R. Co. 27 Vt. 140; Nelson v. Vermont &c. R. R. Co. 28 Vt. 717.

6 T. &c. R. R. Co. v. City, 67 Ill. 37.

7 De Graff v. St. Paul &c. R. R. Co. 23 Minn. 144.

§ 18. No president, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

Ark. XVII, 5; Mo. XII, 22; Pa. XVII, 6.

§ 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office.

Ala. XIII, 23; Ark. XVII, 7; Mo. XII, 24; Pa. XVII, 8.

§ 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of com-

peting with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights.

§ 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

Ala. XIII, 22; Ark. XVII, 6; Colo. XV, 6; Ill. XI, 15; Mo. XII, 12; Neb. XI, 7; Pa. XVII, 3; Tex. X, 2.

Freights and fares.—A State has the right to regulate the rates to be charged by a railroad for the transportation of freight or passengers,¹ and this power is not affected by a lease of the road and a pledge of its income.² The State may impose a penalty for taking unlawful toll or freight;³ or may prevent an unjust discrimination in freights.⁴ Where a charter provides for the regulation of the business, a subsequent statute interfering with it is void.⁵ A law changing the tariff of freights allowed by the charter is void.⁶

1 Chicago &c. R. R. Co. v. Iowa, 94 U. S. 155; Winona &c. R. R. Co. v. Blake, 94 U. S. 180; 19 Minn. 418; Parke v. Metrop. R. R. Co. 109 Mass. 506.

2 Chicago &c. R. R. Co. v. Iowa, 94 U. S. 155.

3 Camden & A. R. R. Co. v. Briggs, 22 N. J. 623; Norris v. Androscoggin R. R. Co. 39 Me. 273.

4 Chicago &c. R. R. Co. v. People, 67 Ill. 11; Vincent v. Chicago &c. R. R. Co. 49 Ill. 33; People v. Chicago &c. R. R. Co. 55 Ill. 111; Chicago &c. R. R. Co. v. People, 56 Ill. 365.

5 State v. Noyes, 47 Me. 189.

6 Sloan v. Missouri P. R. R. Co. 2 Cent. L. J. 781; Philadelphia &c. R. R. Co. v. Bowers, 4 Houst. 506; Hamilton v. Keith, 5 Bush, 458; Attorney-General v. Railroad Co. 35 Wis. 425. But see Moore v. Illinois Cent. R. R. Co. 4 Chic. L. N. 123.

§ 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors thereof at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, commencing on the first Monday after the first day of January next succeeding their election. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpoenas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to

send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in

addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The Legislature shall have power, by a two-thirds vote of all the members elected to each House, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever, from any cause, a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

Regulation of Railways Act—Law Rep. 8 Stats. 238; 42 Law J. 149.

Commissioners.—A statute may authorize the appointment of commissioners to determine the duties and obligations of railroad companies,¹ or may prohibit a railroad from constructing a track where it will endanger safe and convenient access to a depot,² but it cannot change the gauge of a railroad.³ A statute may render a railroad liable for injuries caused by sparks from its engine,⁴ or for the neglect and misconduct of its employees,⁵ or may require railroads to build a depot at a certain place and stop thereat.⁶ If a commissioner merely has the power to approve or disapprove of the abandonment of a station, his consent is not a contract binding on the State.⁷

1 *Portland R. R. Co. v. Railway Co.* 46 Me. 69.

2 *P. & C. R. R. Co. v. B. & C. R. R. Co.* 65 Me. 122.

3 *State v. Richmond & C. R. R. Co.* 73 N. C. 537.

4 *Lyman v. B. & C. R. R. Co.* 58 Mass. 288; *Rodemacner v. M. & C. R. R. Co.* 41 Iowa, 297.

5 *B. & C. R. R. Co. v. State*, 32 N. H. 215.

6 *Railroad Commissioners v. P. & C. R. R. Co.* 63 Me. 269.

7 *State v. N. H. & C. R. R. Co.* 43 Conn. 351.

§ 23. Until the Legislature shall district the State, the following shall be the railroad districts: The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the Counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

§ 24. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

ARTICLE XIII.

REVENUE AND TAXATION.

1. Taxation to be in proportion to value.
2. Land and improvements to be separately assessed.
3. Sectionized and unsectionized land, how assessed.
4. Securities, taxable.
5. Contract of borrower to pay tax on loan void.
6. Power of taxation cannot be surrendered.
7. Payment of taxes by installments.
8. Annual statement of property to be given.
9. State board of equalization.
10. Property, where assessed.
11. Income taxes.
12. Poll tax.
13. Laws to be passed by legislature.

§ 1. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law.¹ The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; *provided*, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation.² The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State.³

¹ Ark. XVI, 5; La. VI, 118; Miss. XII, 20; Mo. X, 4; Neb. IX, 1; Tex. VIII, 1; Va. X, 1; W. Va. X, 1.

² Kans. XI, 2; Minn. IX, 3, 4; Neb. IX, 2; N. C. V, 3; Ohio, XII, 2;

³ Ark. XVI, 5; N. C. V, 3.

Taxation.—By the Revolution the powers of government devolved upon the people of the United States.¹ Taxation is the act of laying on a tax, or imposing burdens or charges on persons or property,² and attaches on all persons and property within the jurisdiction.³ A tax upon a new subject, or an increased tax upon an old one, does not impair the obligation of the contract.⁴

1 McCullough v. Maryland, 4 Wheat. 316; Dartmouth Coll. v. Woodward, 4 Wheat. 518; Green v. Biddle, 8 Wheat. 1; Ogden v. Saunders, 12 Wheat. 213; Cherokee Nation v. Georgia, 5 Peters, 47.

2 Knowlton v. Rock Co. 9 Wis. 418.

3 Dobbins v. Commissioners, 16 Peters, 435.

4 North Mo. R. R. Co. v. Maguire, 29 Wall. 46; 49 Mo. 490.

State taxation.—A State may impose a tax on its corporation as an entity as well as upon the corporation stock, its capital, or its separate corporation property, and this may be in proportion to the income received as well as to the value;¹ or it may repeal a temporary rate and impose another and higher rate.² A tax by a State on its own corporations is valid, although the capital be invested in shipping.³ A tax on water-craft in which goods are sold by retail is valid, although the goods were brought from another State.⁴ A State may tax bonds issued by itself for borrowed money.⁵ A State may levy a tax on business and persons within its limits;⁶ so it may tax railroad property and telegraph lines within its limits;⁷ may tax professions, occupations, and trades;⁸ may regulate and license the practice of law.⁹

1 Delaware R. R. Tax, 18 Wall. 232.

2 St. Joseph v. Hannibal & St. J. R. R. Co. 39 Mo. 476.

3 Berney v. Tax Collector, 2 Bailey, 654; South Carolina v. Charleston, 4 Rich. 289.

4 Harrison v. Mayor, 11 Miss. 581.

5 Champaign Bank v. Smith, 7 Ohio St. 42; People v. Home Ins. Co. 29 Cal. 533, explained in Murray v. Charleston, 66 U. S. 447.

6 Nathan v. Louisiana, 8 How. 73.

7 People v. C. P. R. R. Co. 43 Cal. 398; Thompson v. Pacific R. R. 9 Wall. 579.

8 Nathan v. Louisiana, 8 How. 73; Missouri v. North, 27 Mo. 480; Biddle v. Commonwealth, 13 Serg. & R. 405.

9 Bradwell v. State, 16 Wall. 139; Cohen v. Wright, 22 Cal. 194; Aiken v. State Board of Health, 11 Chic. L. N. 35.

Power of taxation.—The taxing power of the State is an attribute of sovereignty, and exists independent of the Constitution of the United States.¹ The power is supreme, unless the subject be beyond the borders of the State, or as to property within the State, but ceded to

the United States, and within their separate and exclusive jurisdiction, and this supremacy cannot be questioned by the judiciary.² Except as restricted by the Constitution, States have full power of taxation over all subjects,³ and over aliens equally with citizens.⁴ The power extends to all means for the development and progress of the State,⁵ and is bounded only by the necessities of the State or the will of the people.⁶ States are only excluded from taxation of the means and instruments employed by the General Government in the exercise of its functions,⁷ or the instruments, emoluments, or persons, and the necessary and proper means to execute its sovereign power,⁸ but though these are exempt, yet the States may tax the property of Government agents,⁹ as railroad property and telegraph lines within its limits.¹⁰ The legislature may restrain the power of taxation by municipal corporations.¹¹ The power of taxation includes the power to enact internal revenue laws.¹² The taxing power cannot be invoked in aid of enterprises strictly private.¹³

1 *McCulloch v. Maryland*, 4 Wheat. 316; *Lane Co. v. Oregon*, 9 Wall. 77; *Railroad Co. v. Peniston*, 18 Wall. 23; *Nathan v. Louisiana*, 8 How. 73; *People v. Coleman*, 4 Cal. 46; *Dobbins v. Commrs. of Erie Co.* 16 Peters, 435.

2 *McCulloch v. Maryland*, 4 Wheat. 316; *Gibbons v. Ogden*, 9 Wheat. 199; 17 Johns. 488; 4 Johns. Ch. 150; *People v. New York*, 2 Black. 629; 2 Wall. 200; 3 *Ibid.* 573; *Passenger Cases*, 7 How. 538; *Ward v. Maryland*, 12 Wall. 427; *Pullen v. Kinsinger*, 2 Abb. U. S. 112; U. S. v. *Arnes*, 1 Wood. & M. 76; *Russell v. N. Y.* 2 Denio, 461; *State Treasurer v. Wright*, 28 Ill. 509; *People v. Hawley*, 3 Mich. 330; *Fifield v. Close*, 16 Mich. 585; *People v. Mayor &c. of Brooklyn*, 4 N. Y. 425; *Scovill v. Cleveland*, 1 Ohio St. 126; *Maloy v. Marietta*, 11 *Ibid.* 638; *Weiler v. Hade*, 52 Pa. St. 474; *Armington v. Barnet*, 15 Vt. 749; *Mayor &c. v. Lord*, 18 Wend. 136; *Weber v. Reinhard*, 73 Pa. St. 370.

3 *Lane Co. v. Oregon*, 7 Wall. 71; *Ward v. Maryland*, 12 Wall. 430; *Loan Assn. v. Topeka*, 20 Wall. 669; *Bates v. Cooper*, 5 How. 115; *Pullen v. Kinsinger*, 2 Abb. U. S. 110; *Gashweiler v. McIlvoy*, 1 A. K. Marsh. 84; *Rexford v. Knight*, 15 Barb. 627; *Ruthbothom v. McClure*, 4 Blackf. 505; *Hawkins v. Lawrence*, 8 *Ibid.* 226; *Bradley v. N. Y. &c. R. Co.* 21 Cal. 304; *Clark v. Saybrook*, 21 Conn. 313; *Russell v. N. Y.* 2 Denio, 461; *People v. Commrs.* 5 Denio, 401; *Raleigh &c. Co. v. Davis*, 2 Dev. & B. 451; *Swan v. Williams*, 2 Mich. 442; *Baker v. Johnson*, 2 Hill, 342; *People v. Hayden*, 6 *Ibid.* 359; *McCormick v. Town of La Fayette*, 1 Ind. 48; *Canal Co. v. Ferris*, 2 *Ibid.* 331; *People v. Wells*, 12 *Ibid.* 102; *Jackson v. Winn*, Litt. 322; *Mason v. Kennebec &c. Co.* 31 Me. 215; *People v. M. & R. R. Co.* 3 Met. 436; *Smith v. McAdam*, *Ibid.* 506; *Charlestown &c. R. R. Co. v. Middlesex*, 7 Met. 78; *Mount Wash. R. R. Co.'s Petition*, 30 N. H. 135; *Bank of Chenango v. Brown*, 26 N. Y. 467; *Ligat v. Commonwealth*, 19 Pa. St. 456; *Yost's Report*, 17 *Ibid.* 524; *Mayor of Pittsburgh v. Scott*, 1 Pa. St. 305; *Bloodgood v. Mohawk Co.* 18 Wend. 9; *Mercer v. McWilliams*, Wright, 132; *Bennington v. Park*, 50 Vt. 178; *McCullough v. Maryland*, 4 Wheat. 316; *S. & V. R. Co. v. Stockton*, 41 Cal. 166.

4 *Fratz's Appeal*, 52 Pa. St. 367; *Providence Bank v. Billings*, 4 Peters, 514.

5 *Stein v. Mayor &c.* 24 Ala. 591.

- 6 Washington Avenue, 69 Pa. St. 352.
- 7 McCulloch v. Maryland, 4 Wheat. 316; Van Allen v. Assessors, 3 Wall. 535; Austin v. Aldermen, 7 Wall. 699; Banks v. Mayor, 7 Wall. 16; Hamilton Comp. v. Massachusetts, 6 Wall. 633; Dobbins v. Commrs. of Erie Co. 16 Peters, 435; People v. Commrs. of Taxes, 4 Wall. 244; 35 N. Y. 423; Osborn v. Bank of U. S. 9 Wheat. 738.
- 8 Dobbins v. Commrs. of Erie Co. 16 Peters, 435; 7 Watts, 513.
- 9 Railroad Co. v. Penniston, 18 Wall. 5.
- 10 People v. C. P. R. R. Co. 43 Cal. 398.
- 11 Stockton & V. R. R. Co. v. Stockton, 41 Cal. 167.
- 12 Matt. of Meador, 1 Abb. U. S. 334.
- 13 Loan Asso. v. Topeka, 20 Wall. 663; In re Mayor of N. Y. 11 Johns. 80; Broadhead v. Milwaukee, 19 Wis. 624; Stockton & V. R. R. Co. v. Stockton, 41 Cal. 173.

Restriction on State powers. A State cannot tax United States property within its limits,¹ nor the compensation of a United States officer;² but a State may tax the salary of a post-office clerk.³ So, a party who obtains a license to trade from the Government is not an officer.⁴ A State cannot tax public moneys devoted to its appropriate purposes,⁵ nor money in the treasury, nor precious metals in the mint, nor the lots, structures, ships, materials of war, or other property devoted to the public purposes of the United States,⁶ nor can it tax internal revenue stamps.⁷ These exemptions depend upon the effect of the tax, whether it will hinder the efficient exercise of the powers of the Government,⁸ but not to a tax which only remotely affects the efficient exercise of the powers of the Government.⁹ To make a tax void the absence of all possible public interest must be clear and palpable.¹⁰ A State may levy a tax to pay the commutation of persons drafted into the military service,¹¹ or to pay bounties to volunteers.¹² So, a State may tax shares of a railroad to which Congress has extended aid, or may tax the gross receipts of railroads,¹³ and may provide for collecting taxes in gold or silver only.¹⁴ A State cannot tax imports in their original packages;¹⁵ but after the goods have been broken up for use, or for retail, and been incorporated and mixed up with the mass of the property of the State, a tax may be imposed;¹⁶ nor impose a tax on bills of lading,¹⁷ nor impose a passenger stamp-tax.¹⁸ An importing merchant may be taxed on what he is worth, like any other citizen;¹⁹ so, a State may tax capital, although continually invested in cotton purchased for exportation.²⁰ A purchaser from an importer is subject to taxation.²¹ The articles cease to be importations the moment the importer becomes a vendor.²² A State cannot pass a law taxing a corporation when it violates the obligation of the con-

tract.²³ So, a subsequent act, imposing additional taxation on shares of stockholders, impairs the obligation.²⁴

- 1 Anonymous, 9 Opin. Att. Gen. 291.
- 2 Dobbins v. Commissioners, 16 Peters, 435; 7 Watts, 513.
- 3 Melcher v. Boston, 50 Mass. 73.
- 4 State v. Bell, Phill. (N. C.) 76.
- 5 Comm. v. Morrison, 2 A. K. Marsh. 75.
- 6 City v. Churchill, 33 N. Y. 683; 43 Barb. 550.
- 7 Palfrey v. Boston, 101 Mass. 329.
- 8 Railroad Co. v. Peniston, 18 Wall. 5; National Bank v. Comm. 9 Wall. 353; Waite v. Dowley, 9 Ch. L. N. 263; Dobbins v. Commrs, 16 Peters, 435. 7 Watts, 513.
- 9 Railroad Co. v. Peniston, 18 Wall. 5. When Congress has not interposed to protect the property of persons and corporations employed in Government service from taxation, State taxation is not obnoxious—Lane Co. v. Oregon, 7 Wall. 77; National Bank v. Commonwealth, 9 Wall. 353; Thomson v. Pac. R. R. Co. 9 Wall. 531.
- 10 Brodhead v. Milwaukee, 19 Wis. 624; Stockton & V. R. R. Co. v. Stockton, 41 Cal. 173; Schenley v. Alleghany, 25 Pa. St. 128.
- 11 Freeland v. Hastings, 10 Allen, 570; Wagner v. Collector, 31 N. J. 150.
- 12 Booth v. Woodbury, 32 Conn. 118; Coffman v. Kelghtley, 24 Ind. 500; Board v. Bearss, 25 Ind. 110; Winchester v. Corrinna, 55 Me. 9; Coner v. Folsom, 13 Minn. 219; Wilson v. Bruckman, 13 Minn. 441; State v. Jackson, 31 N. J. 189; State v. Demarest, 32 N. J. 523; Speer v. Directors, 50 Pa. St. 150; Ahl v. Gleim, 52 Pa. St. 432. But see Ferguson v. Landrum, 1 Bush, 548.
- 13 Woodruff v. Parham, 8 Wall. 123.
- 14 State Treasurer v. Wright, 23 Ill. 509; Whiteaker v. Haley, 2 Oreg. 128.
- 15 Hinson v. Lott, 8 Wall. 148; 40 Ala. 123; Woodruff v. Parham, 41 Ala. 334; Waring v. Mayor &c. 8 Wall. 110; 41 Ala. 139; Almy v. State, 24 How. 165; Low v. Austin, 13 Wall. 34.
- 16 Brown v. Maryland, 12 Wheat. 419; License Cases, 5 How. 575; Parvoar v. Commonwealth, 5 Wall. 479; Waring v. Mayor, 8 Wall. 12; State Tax on Railroad G. Receipts, 15 Wall. 295; People v. Coleman, 4 Cal. 46; Wyne v. Wright, 4 Dev. & B. 19; Cowles v. Brittain, 2 Hawks, 204; Tracy v. State, 3 Mo. 3; Davis v. Dashiell, Phill. (N. C.) 114; Cummings v. Savannah, R. M. Charit. 26; Biddle v. Commonwealth, 13 Serg. & R. 405; Woodruff v. Parham, 41 Ala. 334; Murray v. Charleston, 95 U. S. 447. But see State v. North, 27 Mo. 464. And see Raguet v. Wade, 4 Ohio, 107.
- 17 Brummagin v. Tillinghast, 18 Cal. 265.
- 18 People v. Raymond, 34 Cal. 492.
- 19 License Cases, 5 How. 504; 13 N. H. 536; State v. Pinckney, 10 Rich. 474.
- 20 People v. Tax Commissioners, 17 N. Y. Supr. 255.
- 21 Waring v. The Mayor, 8 Wall. 110.
- 22 State v. Peckham, 3 R. I. 289.
- 23 Washington University v. Rouse, 8 Wall. 439; Home of the Friendless v. Rose, 8 Wall. 430.
- 24 Farrington v. Tennessee, 95 U. S. 679.

Legislative authority.—The legislature is vested with entire control and management of the financial affairs of the State,¹ and the disposal of the revenues,² not only of the State, but of a county, city, or town.³ The power to apportion and direct the assessment and collection of a tax is exclusive in the legislature,⁴ which is a legislative and not a judicial act,⁵ the only limitation to the power being found in this section.⁶ The power to tax involves the power to destroy.⁷ The interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no contract, against unjust and excessive taxation as well as against unwise legislation generally.⁸ Laws levying taxes for general purposes have no reference to taxes assessed under special authority.⁹ The legislature may prescribe a division of taxes when collected.¹⁰ An act that provides that a penalty shall attach to and become part of a delinquent tax is void.¹¹ A relief act, making payment of tax on debts a condition precedent to recovery thereon, is unconstitutional.¹² The legislature may empower a city to commute for a tax or contract for its release.¹³

1 *McCauley v. Brooks*, 16 Cal. 11.

2 *Myers v. English*, 9 Cal. 34.

3 *Blanding v. Burr*, 13 Cal. 343.

4 *Savings & Loan Soc. v. Austin*, 46 Cal. 415; *Turner v. Althaus*, 6 Neb. 54.

5 *Hardenburgh v. Kidd*, 10 Cal. 402.

6 *Blanding v. Burr*, 13 Cal. 343.

7 *Stockton & V. R. R. Co. v. Stockton*, 41 Cal. 166; *Fertilizing Co. v. Hyde Park*, 97 U. S. 666.

8 *Providence Bank v. Billings*, 4 Peters, 563; *State v. Lancaster Co.* 4 Neb. 540; *B. & M. R. R. Co. v. Lancaster Co.* 4 Neb. 304.

9 *Austin v. Gulf & c. R. R. Co.* 45 Tex. 234.

10 *Sangamon Co. v. Springfield*, 63 Ill. 66.

11 *Ryan v. State*, 5 Neb. 276.

12 *Gardner v. Jeter*, 40 Ga. 125; *Kimbrow v. Bank of Fulton*, 49 Ga. 419; *Mitchell v. Cothraus*, 43 Ga. 125.

13 *Parmelee v. Chicago*, 60 Ill. 267.

Property taxable.—The legislative authority is vested with the power to determine the objects in favor of which that power shall be exercised.¹ All property is subject to taxation and cannot be exempted,² but crediting taxes heretofore paid on an invalid levy is not an exemption from taxation.³ Property includes not only visible and tangible property, but also choses in action, State bonds, bills of exchange, and solvent debts secured by mortgage.

It was not intended that any kind of property should be exempted.⁴ The taxation of a mortgage is not a double taxation.⁵ Revenue laws exempting private property from taxation are to that extent unconstitutional, and all parts thereof relating to such exemptions must be disregarded.⁶

1 *People v. Pacheco*, 27 Cal. 209.

2 *People v. Gerke*, 35 Cal. 677; *People v. Black D. Co.*, 37 Cal. 54; *People v. Whartenby*, 33 Cal. 461; *People v. Eddy*, 43 Cal. 336; *People v. Latham*, 52 Cal. 598.

3 *People v. Latham*, 52 Cal. 598.

4 *People v. McCreery*, 34 Cal. 433; *People v. Eddy*, 43 Cal. 336; *Savings & L. So. v. Austin*, 43 Cal. 477. But see *contra*, *Ibid.* 473; *Pullen v. Raleigh*, 63 N. C. 451.

5 *People v. McCreery*, 34 Cal. 432; *People v. Whartenby*, 33 Cal. 461; *Lick v. Austin*, 43 Cal. 50; *People v. Kohl*, 49 Cal. 127. But see *Savings & L. So. v. Austin*, 43 Cal. 415.

6 *People v. Gerke*, 35 Cal. 677.

Valuation of property.—The valuation of property by the assessor is not necessarily final.¹ The legislature cannot by law fix the assessed value of property.² It may create a State board of equalization to equalize the assessed value of property between the different counties, the controller to be one, and the governor to appoint the rest.³ "In proportion to value" does not require that the value be found after the rate of taxation is fixed.⁴ The constitution does not require annual assessments. Property may be taxed for several years at a rate based upon a particular valuation.⁵

1 *Savings & Loan So. v. Austin*, 46 Cal. 415.

2 *People v. Hastings*, 29 Cal. 449.

3 *Savings & L. So. v. Austin*, 43 Cal. 415.

4 *People v. Latham*, 52 Cal. 598.

5 *Kelsey v. Trustees of Nevada*, 18 Cal. 629.

Public improvements.—The legislature may compel local improvements to promote the health of the people, may abate nuisances, may open canals, build levees, and impose local assessments to pay for the same,¹ and may submit the imposition of a tax for repairing and maintaining a levee to the vote of the people.² It is not essential to the validity of an act authorizing the issuance of bonds and levying a tax in aid of public improvements that the improvement should be confined to the locality liable on the bonds or taxed to redeem them.³ A tax levied in Sacramento County for a wagon road from its eastern boundary line to Carson Valley held valid.⁴ A tax for local improvements levied on property within a district created by the legislature is not an assessment

within the meaning of that term.⁵ The words "assessment" and "taxation," as used in the constitution, have different significations.⁶ An assessment for street work is not taxation.⁷ The words "taxation to be equal and uniform" have no application to assessments for local improvements.⁸ This section has no application to assessments for street work.⁹ A surface tax on a drainage district must be made to fall on the entire political district.¹⁰ A special act authorizing the issue of bonds for local improvements is unconstitutional.¹¹ The legislature may establish and operate a territorial road at the expense of the several counties through which it passes.¹² The taxation of one locality more than its just share in an improvement for a common benefit is unconstitutional.¹³

1 Hagar v. Yolo Co. 47 Cal. 223.

2 Savings & Loan Assn. v. Austin, 46 Cal. 473; Alcorn v. Hamer, 38 Miss. 634.

3 Patterson v. Yuba Co. 13 Cal. 175. For a general discussion of the question of subsidies, see S. & V. R. R. Co. v. Stockton, 41 Cal. 147; Hobart v. Butte Co. 17 Cal. 23; Robinson v. Bidwell, 22 Cal. 379; Lowe v. Marysville, 5 Cal. 214.

4 People v. Seymour, 16 Cal. 332.

5 People v. Whyler, 41 Cal. 351; Smith v. Farrelly, 52 Cal. 77.

6 Taylor v. Palmer, 31 Cal. 240.

7 Chambers v. Satterlee, 40 Cal. 497; Burnett v. Sacramento, 12 Cal. 76.

8 Hagar v. Yolo Co. 47 Cal. 223; Burnett v. Sacramento, 12 Cal. 76; Emery v. S. F. Gas Co. 23 Cal. 345.

9 Chambers v. Satterlee, 40 Cal. 497.

10 State v. Chamberlin, 8 Vroom, 333; State v. Fuller, 10 Vroom, 576.

11 Clegg v. School District, 8 Neb. 173; Dundy v. Richardson Co. 8 Neb. 518.

12 Lewis Co. v. Hays, 1 Wash. Ter. 123.

13 Burr v. Carbondale, 76 Ill. 455. And see Primm v. Belleville City, 59 Ill. 142.

Valuation.—All property is to be taxed according to its valuation, and the taxes are to be equal and uniform.¹ This applies only to direct taxes on property.² It is a limitation on the power of taxation, and secures equality and uniformity.³ It does not require the legislature to designate the precise amount which each corporation shall pay, without regard to the value of the franchise and the privilege granted.⁴ A tax of coal companies on their franchises, according to the amount of coal mined, is constitutional. It is a tax on the franchise, and uniform.⁵

1 Stevens v. State, 2 Ark. 231; State v. Newark, 39 N. J. 380.

2 State v. Lancaster Co. 4 Neb. 540.

3 State v. Cumb. & Penn. R. R. Co. 40 Md. 44.

4 Porter v. Rockford, 76 Ill. 561.

5 Kittanning Coal Co. v. Com. Pa. St. 100.

Exemption.—Exemptions from taxation are always subject to be recalled when granted as a mere privilege and not for a sufficient consideration.¹ A purely public charity is not necessarily one solely controlled and administered by the State, but it extends to institutions for the purposes of purely public charity and not for gain.² The legislature has no power to exempt a city from its proportion of the taxes,³ and no portion of any distinct genus or species of property on which taxation is imposed can ever be exempt.⁴ This section is not immediately operative; it is mandatory on the legislature to enact laws framed on its special intent, and to repeal laws inconsistent with it.⁵

1 Ramsey v. Hager, 76 Ill. 432.

2 Donohugh's Appeal, 86 Pa. St. 304.

3 People v. Barger, 62 Ill. 452; People v. Lippincott, 65 Ill. 548.

4 Pike v. State, 5 Ark. 204; explained, State v. County Court, 19 Ark. 368.

5 Lehigh Iron Co. v. Lower Macungie Township, 81 Pa. St. 482.

Exemption from taxation.—The State right of taxation can be waived only by express stipulation,¹ and the intention to exempt must be clear.² The legislature may bind the State by contract so as to exempt property from taxation,³ but the contract must be construed strictly.⁴ If property be given to a society for certain purposes, under a statute exempting such gifts, the statute is a contract with the donors, and such property is exempt so long as it is used for the purposes of the donee.⁵ A provision in the charter of an eleemosynary corporation, or of a university, that its property shall be exempt, is a contract and cannot be impaired.⁶ A statute which provides that public grants for pious and other uses shall be forever exempt has no effect on prior grants while it remains in force, and may be repealed.⁷ If the exemption is a mere gratuity, is spontaneous, and no service or duty or other condition is imposed, it may be withdrawn at any time;⁸ but if a statute for a valid consideration stipulates that certain lands shall be exempt from taxation, it cannot pass a law to impair the obligation of the contract,⁹ nor will the payment of taxes for twenty years prevent the owner from claiming the exemption.¹⁰ If a statute provides that all land purchased from the United States shall be exempt from taxation for a certain period, it cannot be taxed till the expiration of that time.¹¹ If the land is exempt the buildings erected on it are ex-

empt also ;¹ but if the interest in the buildings is created entirely distinct from the interest in the lands, the buildings may be taxed although the land is exempt.¹² If the land be exempt it will be exempt in the hands of the lessee ;¹⁴ but if the lessee covenants to pay such taxes as may be assessed thereon he cannot allege the unconstitutionality of an act imposing a tax.¹⁵ If the privilege of exemption is annexed to the land it will pass to a purchaser ;¹⁶ but it will not pass to a purchaser under a subsequent act authorizing the sale,¹⁷ and a subsequent statute may render it liable where it is conveyed without the reservation of an annual rent.¹⁸

1 *Pacific R. R. Co. v. Maguire*, 20 Wall. 42; *Tomlinson v. Branch*, 15 Wall. 430; *Tomlinson v. Jessup*, 15 Wall. 454; *Providence R. R. v. Billings*, 4 Peters, 514; *Charles River Bridge v. Warren Bridge*, 11 Peters, 420; *Turnpike Co. v. State*, 3 Wall. 210; *Jones & Co. v. Comm.* 69 Pa. St. 137.

2 *Gilman v. Sheboygan*, 2 Black, 513; *Rector &c. v. Philadelphia Co.* 24 How. 302; *Jones & Co. v. Comm.* 69 Pa. St. 137.

3 *New Jersey v. Wilson*, 7 Cranch, 166; *Richmond R. R. Co. v. Louisa R. R. Co.* 13 How. 71; *Dodge v. Woolsey*, 18 How. 331; *Piqua Br. Bk. v. Knoop*, 16 How. 367; *Von Hoffman v. Quincy*, 4 Wall. 535; *Jefferson Br. Bk. v. Skelly*, 1 Black, 447; *Washington Univ. v. Rouse*, 8 Wall. 430; *Tomlinson v. Branch*, 15 Wall. 460; *Tomlinson v. Jessup*, 15 Wall. 454; *Pacific R. R. Co. v. Maguire*, 20 Wall. 42; *Erle R. Co. v. Penn.* 21 Wall. 438; *Gordon v. Appeals Tax Ct.* 3 Har. 133; *McGee v. Mathis*, 4 Wall. 143; *Home of the Friendless v. Rouse*, 8 Wall. 430; *Wilmington R. R. Co. v. Reid*, 13 Wall. 264; *Humphrey v. Pegues*, 16 Wall. 244.

4 *Weston v. Supervisors*, 44 Wis. 242.

5 *Atwater v. Woodbridge*, 6 Conn. 223; *Osborne v. Humphreys*, 7 Conn. 335; *Parker v. Redfield*, 10 Conn. 490; *Landon v. Litchfield*, 11 Conn. 251; *Seymour v. Hartford*, 21 Conn. 431; *Herrick v. Randolph*, 13 Vt. 525.

6 *Home of the Friendless v. Rouse*, 8 Wall. 430; *Washington University v. Rouse*, 8 Wall. 430; 42 Mo. 308.

7 *Herrick v. Randolph*, 13 Vt. 525.

8 *Rector v. Philadelphia*, 24 How. 300; 24 Pa. St. 229; *Tucker v. Ferguson*, 22 Wall. 527; *Bramerd v. Colchester*, 31 Conn. 407; *Lord v. Litchfield*, 36 Conn. 116; *West Wisconsin R. R. Co. v. Trempealeau Co.* 93 U. S. 535. And see *Providence Bank v. Billings*, 4 Wheat. 316; *Fertilizing Co. v. Hyde Park*, 97 U. S. 666.

9 *State v. Wilson*, 7 Cranch, 164; 2 N. J. 300.

10 *Landon v. Litchfield*, 11 Conn. 251.

11 *Thompson v. Holton*, 6 McLean, 386. And see *McGee v. Mathis*, 4 Wall. 143.

12 *Osborne v. Humphreys*, 7 Conn. 335.

13 *Parker v. Redfield*, 10 Conn. 490.

14 *Osborne v. Humphrey*, 7 Conn. 335; *Landon v. Litchfield*, 11 Conn. 251; *Hardy v. Waltham*, 24 Mass. 108; *Matheny v. Golden*, 5 Ohio St. 361; *Kumler v. Traber*, 5 Ohio St. 442.

15 *Hart v. Cornwall*, 14 Conn. 228.

16 *State v. Wilson*, 7 Cranch, 164; 2 N. J. 300.

17 *Armstrong v. Treasurer*, 16 Peters, 281; 10 Ohio, 235.

18 *New Haven v. Sheffield*, 30 Conn. 160; *Brainerd v. Colchester*, 31 Conn. 407; *Lord v. Litchfield*, 36 Conn. 116.

Construction and validity of statute.—To make a tax void the absence of all possible public interest must be clear and palpable.¹ Whether a special act legalizing an assessment made under a general law is constitutional, not decided.² The percentage allowed the gauger of San Francisco is not a tax, but a fee to a public officer; nor is the act creating the office an act imposing duties on imports.³ A statute authorizing the assessment of a portion of the expenses for widening a street upon lots situated on a cross street is constitutional.⁴ An act imposing a personal liability for a street assessment held unconstitutional.⁵ A law is constitutional which provides that a collector of taxes shall pay part of the fees allowed him by law into the general fund in the county treasury.⁶ A statute authorizing a tax according to a previous assessment is not retrospective.⁷ A statute controlling operations of foreign insurance companies is not a regulation of commerce;⁸ so, an ordinance imposing a city tax is not a violation of the Federal Constitution,⁹ even though the business extends beyond the limits of the State;¹⁰ so, a State law imposing a tax on brokers dealing in foreign exchange is not in conflict.¹¹ So, a tax upon the annual rent reserved in leases does not impair the obligation of the contract.¹²

1 *S. & V. R. R. Co. v. Stockton*, 41 Cal. 173.

2 *People v. Ahern*, 52 Cal. 210.

3 *Addison v. Saulnier*, 19 Cal. 82.

4 *Appeal of Piper*, 32 Cal. 530.

5 *Taylor v. Palmer*, 21 Cal. 240. But see *Walsh v. Matthews*, 29 Cal. 123.

6 *Ream v. Siskiyou*, 36 Cal. 620.

7 *Locke v. New Orleans*, 4 Wall. 172.

8 *Paul v. Virginia*, 8 Wall. 163; *Insurance Co. v. New Orleans*, 1 Woods, 69; *Home Ins. Co. v. Augusta*, 53 U. S. 116.

9 *Home Ins. Co. v. Augusta City*, 93 U. S. 116.

10 *Osborne v. Mobile*, 16 Wall. 432. And see *Home Ins. Co. v. Augusta*, 93 U. S. 116.

11 *Nathan v. Louisiana*, 8 How. 73.

12 *Loring v. State*, 16 Ohio, 530; *Livingston v. Hollenbeck*, 4 Barb. 9.

Revenue officers.—The office of sheriff and tax collector may be united in the same hands. The legislature may deprive the sheriff of the office of tax collector before the expiration of his term.¹ It may devolve the office and duties of tax collector upon the incumbent of any other elective office; but the law by which this is

done must precede the election of such officer,² but cannot transfer an *ex officio* office which, under the constitution, is required to be filled by election, to the incumbent of another office elected before the transfer is sought to be made,³ nor can it transfer the duties of tax collector from a person elected as such to one who was not so elected, but may provide for the election of a person as tax collector, who may enter upon the discharge of the duties of the office before the expiration of the term of a tax collector elected under the law as it previously existed.⁴ The sheriff acquires his authority to act as tax collector not from the constitution, but in those counties where he so acts, under statutes which invest the person elected to the office of sheriff with another and distinct office.⁵ It is competent for the legislature to authorize boards of supervisors to *appoint* collectors of such licenses.⁶ The authority of assessors is limited to districts within which they are elected.⁷ An assessment made by an assessor elected by the electors of a city and county is not a sufficient basis for the levy of a tax in the city for city purposes.⁸ The collection of a tax estops the collector from denying the validity of the tax law.⁹

1 Attorney-General v. Squires, 14 Cal. 12.

2 People v. Kelsey, 34 Cal. 470.

3 People v. Kelsey, 34 Cal. 470.

4 Mills v. Sargent, 33 Cal. 379.

5 Lathrop v. Brittain, 3 Cal. 680.

6 Attorney-General v. Squires, 14 Cal. 12.

7 People v. Placerville & S. V. R. R. Co. 34 Cal. 656.

8 People v. Hastings, 29 Cal. 449.

9 Morris v. State, 47 Tex. 583.

City and county taxes.—The legislative power to tax may be delegated to a municipal corporation.¹ While the constitution fixes no limit to the amount of taxation which municipal corporations may impose, it requires that the rate shall be uniform, and that the proportion between taxes on property and on polls shall be observed.² A city may tax for current expenses, but not to pay new debts, unless submitted to a vote of the people.³ There is no limit to the power of taxation to pay debts created before the adoption of the new constitution.⁴

1 Butler's App. 73 Pa. St. 443.

2 French v. Wilmington, 75 N. C. 477; Weinstein v. Commrs. of Newbern, 71 N. C. 535.

3 Weinstein v. Commrs. of Newbern, 71 N. C. 535.

4 Griffith v. Pasquotank Co. 74 N. C. 701; French v. North Hanover Co. 74 N. C. 662; Carrow v. Beaufort Co. 74 N. C. 700.

Licenses.—State license acts are not in violation of the Federal Constitution.¹ Giving a license by a municipal corporation is not a regulation of commerce.² States may impose a license tax on foreign corporations.³ A license is a contract, but revocable at the will of the licensor, unless otherwise provided in the State constitution.⁴ If no bonus is given for the right, a subsequent levy of a tax is valid.⁵ So, a license to sell liquor is issued as a part of the police system of the State, and is subject to modification or revocation.⁶ The license to practice law or medicine may be modified in any manner which the public welfare may demand, and a tax on the license is not unconstitutional.⁷ If the license to erect a dam in a navigable river is defeasible by the terms thereof, it may be modified or revoked.⁸ The certificate to a foreign corporation does not constitute a contract so as to prohibit subsequent taxation by the laws of the State.⁹

1 License Cases, 5 How. 504.

2 *Chilvers v. People*, 11 Mich. 43; *People v. Babcock*, 11 Wend. 586.

3 *Paul v. Virginia*, 8 Wall. 163; *Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 576; *Louisiana v. Lathrop*, 10 La. An. 338; *Louisiana v. Ogden*, 10 La. An. 432; *Louisiana v. Fosdick*, 21 La. An. 434; *Insurance Co. v. Comm.* 25 Pa. St. 513.

4 *Phalen v. Virginia*, 8 How. 163; 3 Harring. 441; *Calder v. Kurby*, 5 Gray, 57; *Adams v. Hackett*, 27 N. H. 239; *Hirn v. Ohio*, 1 Ohio St. 21; *Metrop. Bd. of Excise v. Barrie*, 7 Tiff. 667; *Bass v. Mayor, Meigs*, 421; *Gregory v. Shelby*, 2 Met. (Ky.) 539; *Freiligh v. State*, 8 Mo. 606; *State v. Sterling*, 8 Mo. 637; *State v. Hawthorn*, 9 Mo. 389.

5 *Wendover v. Lexington*, 15 B. Mon. 258.

6 *Fell v. State*, 42 Md. 71; *Calder v. Kurby*, 71 Mass. 597; *State v. Holmes*, 33 N. H. 225; *Metrop. Bd. of Excise v. Barrie*, 34 N. Y. 657; *Comm. v. Intox. Liquors*, 115 Mass. 153.

7 *State v. Fellowes*, 12 La. An. 344; *State v. Waples*, *Ibid.* 343; *New Orleans v. Turpen*, 13 La. An. 56; *Simmons v. State*, 12 Mo. 268; *State v. Gazlay*, 5 Ohio, 14.

8 *Rundle v. Del. &c. Can. Co.* 14 How. 80; 1 Wall. Jr. 275; *Pratt v. Brown*, 3 Wis. 603; *Monongahela Nav. Co. v. Coons*, 6 Watts & S. 101; *Susquehanna Can. Co. v. Wright*, 9 *Ibid.* 9. And see *Glover v. Powell*, 10 N. J. Eq. 211; *Cranshaw v. State R. Co.* 6 Rand. 245.

9 *Home Ins. Co. v. Augusta*, 93 U. S. 116.

Licenses.—This section applies only to direct taxation upon property, and does not prohibit the legislature from enacting license laws,¹ as for sale of intoxicating liquors in incorporated cities and towns.² It does not prohibit the authorizing counties and incorporations from imposing a tax on billiard tables, ten-pin alleys, taverns, groceries, etc., for municipal purposes,³ or on pedlers, auctioneers, brokers, etc., whether persons or corporations,⁴ or an occupation tax on every person or firm dealing in stocks, bills of exchange, etc., at different rates in differ-

ent cities.⁵ The board of supervisors of a city may be empowered to levy a license tax upon the business of a merchant, and an ordinance graduating such tax according to the monthly sales of the merchant is not an unequal tax.⁶ The legislature may discriminate in the imposition of taxes on certain classes of persons and occupations,⁷ but the mere fact that a native of China resides in a mining district does not subject him to the payment of foreign miners' license tax.⁸ Taxation on the gross amount of sales within the corporation limits of a city on any one selling on commission, etc., is valid.⁹ Cities may exercise all powers constitutionally conferred on them.¹⁰ A city council regulating the sale of intoxicating liquors is not unconstitutional;¹¹ so, a city ordinance exacting a license tax for the sale of beer or ale by the cask brought in for sale is not in conflict.¹² The State may regulate the sale of intoxicating liquors,¹³ and require a license for the same,¹⁴ or prohibit the sale altogether.¹⁵ A license for the sale of goods, if imposed on all persons engaged in the same business, is not inconsistent with this provision;¹⁶ but a license tax discriminating against products of other States is in conflict;¹⁷ so, a State cannot impose a license tax on a traveling agent from other States.¹⁸ Although letters-patent grant exclusive rights to make and vend, yet the State may regulate the use of that right as to merely internal commerce or police.¹⁹ Although Congress may regulate licenses to carry on trade within a State for internal revenue purposes, yet the power of the State to tax, control, or regulate the business is not incompatible.²⁰

1 *People v. Naglee*, 1 Cal. 232; *Ex parte Cohn*, 13 Nev. 426; *Ex parte Robinson*, 12 Nev. 263.

2 *Streeter v. People*, 69 Ill. 595.

3 *Washington v. State*, 13 Ark. 752.

4 *Huck v. Chicago &c. Co.* 86 Ill. 352; *Wiggins v. Chicago*, 68 Ill. 372.

5 *Texas B. & Ins. Co. v. State*, 42 Tex. 636.

6 *Sacramento v. Crocker*, 16 Cal. 119.

7 *People v. Coleman*, 4 Cal. 46.

8 *Ex parte Ah Pong*, 19 Cal. 106, denying *Ex parte Naglee*, 1 Cal. 232.

9 *Padelford v. Mayor &c.* 14 Ga. 438.

10 *Logansport v. Saybold*, 59 Ind. 225.

11 *License Tax Cases*, 5 How. 624; *Downing v. Alexandria*, 10 Wall. 173; *Beall v. State*, 4 Blackf. 107; *Lunt's Case*, 6 Me. 412.

12 *Downham v. Alexander*, 10 Wall. 173. See *Huntington v. Cheesbro*, 57 Ind. 74.

13 *Bartemeyer v. Iowa*, 18 Wall. 129; *Groversville v. Howell*, 70 N. Y. 287; *O'Dea v. State*, 57 Ind. 31.

14 License Cases, 5 How. 504; 13 N. H. 536; State v. Wheeler, 25 Conn. 230; Perdue v. Ellis, 18 Ga. 533; Ingersoll v. Skinner, 1 Denio, 540; Jones v. People, 14 Ill. 196; Santo v. State, 2 Iowa. 165; State v. Donohay, 8 Iowa. 36; Corwin v. Kimball, 41 Mass. 357; Corwin v. Clapp, 71 Mass. 97; Keller v. State, 11 Md. 525; State v. Moore, 14 N. H. 451; State v. Peckham, 3 R. I. 239; City v. Ahrens, 4 Strob. 241.

15 Bertholf v. O'Reilly, 13 Am. Law Reg. N. S. 119; Metropolitan Board of Excise v. Barrie, 34 N. Y. 657; Anderson v. Commonwealth, 13 Bush, 435.

16 Dist. of Col. v. Humason, 2 McArthur. 162.

17 Ward v. Maryland, 12 Wheat. 430; Conner v. Elliott, 18 How. 593; Woodruff v. Parham, 8 Wall. 123; Welton v. Missouri, 91 U. S. 275; Missouri v. North, 27 Mo. 434. Butsee Davis v. Dashiell, Phil. N. C. 114.

18 Welton v. Missouri, 91 U. S. 275; State v. Browning, 62 Mo. 591.

19 Patterson v. Kentucky, 11 Chic. L. N. 183· 7 Am. L. R. 83.

20 License Tax Cases, 5 Wall. 462.

§ 2. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

Va. X, 1.

Lands not contiguous should be separately assessed.¹ The legislature cannot discriminate as to values.² Farming lands included within city boundaries may be taxed for municipal purposes.³

1 Dundy v. Richardson Co. 8 Neb. 508.

2 Stevens v. State, 2 Ark. 291.

3 Kelly v. Pittsburgh, 85 Pa. St. 170.

§ 3. Every tract of land containing more than six hundred and forty acres, and which has been sectionized by the United States Government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The Legislature shall provide by law for the assessment, in small tracts, of all lands not sectionized by the United States Government.

§ 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof; *provided*, that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

A statute imposing a tax on a mortgage is valid.¹ So, a tax on a loan may authorize the borrower to deduct the amount of the tax from the interest.² A bond received as a security for the purchase of property may be taxed to any extent required by the State government.³

1 Cook v. Smith, 30 N. J. 387.

2 Maltby v. Reading & Co. R. R. Co. 52 Pa. St. 140.

3 Weston v. Charleston, 2 Peters, 449; Harp. 340.

§ 5. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

§ 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

Ark. XVI, 7; Colo. X, 9; Mo. X, 2; Tex. VIII, 4.

§ 7. The Legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

§ 8. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian, on the first Monday of March.

§ 9. A State Board of Equalization, consisting of one member from each congressional district in this State, shall be elected by the qualified electors of their respective districts at the general election to be held in the year one thousand eight hundred and seventy-nine, whose term of office after those first elected shall be four years, whose duty it shall be to equalize the valuation of the taxable property of the several counties in the State for the purposes of taxation. The Controller of State shall be ex of-

ficio a member of the Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe, as to the county assessments, and under such rules of notice as the State Board may prescribe, as to the action of the State Board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll.

Colo. X, 15; Mo. X, 18. For amendment of § 9, 1885, see p. 143.

Board of equalization.—The legislature may create a State board of equalization, and invest it with powers to act.¹ Such board may assess the value of certain classes of property, leaving other property to be assessed by the ordinary assessors.² Legislation is not necessary to effectuate the constitutional provision concerning the board of equalization.³ The county board may add to or take from the entire assessment of any particular district without notice to the individual tax-payers.⁴

1 *Adsit v. Leib*, 76 Ill. 198.

2 *Porter v. Rockford & C. Co.* 76 Ill. 561.

3 *Hannibal & St. J. R. R. Co. v. State Board*, 64 Mo. 294.

4 *Dundy v. Richardson Co.* 8 Neb. 508.

§ 10. All property, except as hereinafter in this section provided, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law. The franchise, road-

way, road-bed, rails and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization, at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts.

Railroads.—Where a company is operating leased roads in common with its own, and as part of its line, it is proper not only to assess the value of the tangible property of such leased roads to the lessee, but the capital stock for taxation among different companies in the proportion that the length of the main track bears to the whole length, including leased roads.¹ The apportionment of taxation of railroads to counties, cities, and towns along the route is constitutional.²

1 *Huck v. Chicago &c. Co.* 86 Ill. 352.

2 *Hannibal &c. R. R. Co. v. State Board*, 64 Mo. 294.

§ 11. Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

Income tax.—Power is conferred in Texas to tax all occupations except agricultural and mechanical pursuits.
Higgins v. Risler, 47 Tex. 393.

§ 12. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars on every male inhabitant of this State, over twenty-one and under sixty years of age, except paupers, idiots,

insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

S. C. IX, 2; Va. X, 5; W. Va. X, 1.

§ 13. The Legislature shall pass all laws necessary to carry out the provisions of this article

ARTICLE XIV.

WATER AND WATER RIGHTS.

§ 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; *provided*, that the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed, annually, by the Board of Supervisors, or city and county, or City or Town Council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing

water-rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe. Any person, company, or corporation collecting water-rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and water-works of such person, company, or corporation to the city and county, or city or town where the same are collected, for the public use.

§ 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

Water rights.—Powers granted to a water company to lay and collect water rates in a city, although unconstitutional when applied to the company, are not so when the works, etc., are subsequently transferred to the municipal corporation.

Allentown v. Henry, 73 Pa. St. 404.

ARTICLE XV.

HARBOR FRONTAGES, ETC.

§ 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

§ 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

§ 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

ARTICLE XVI.**STATE INDEBTEDNESS.**

§ 1. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or suppress insurrection; unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people. The Legislature may at any time after the ap-

proval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

State debt.—This article limits the public indebtedness to a fixed sum, except under peculiar circumstances.¹ As to what is the creation of a debt within the meaning of this article.² Appropriations, when do not create State debts.³ This article is mandatory. All debts contracted in violation of it are void, and the legislature has no power to levy a tax or to appropriate money to pay them. Claims outstanding contracted in defiance of this article can be legalized by being submitted to a vote of the people, and in no other manner.⁴ The power to determine when a state of war exists is vested in the legislative department, and its determination is not subject to review.⁵ No limitation is imposed upon the amount of State indebtedness which may be created by the legislature in case of war, to repel invasion, or to suppress insurrection.⁶ This article does not prevent the State authorizing counties or municipal corporations to create debts, or the legislature authorizing the local authorities to aid in the construction of railroads.⁷ The limitation of State powers applies to the State alone.⁸

1 *S. & V. R. R. Co. v. Stockton*, 41 Cal. 167.

2 *State v. McCauley*, 15 Cal. 439.

3 *People v. Pacheco*, 27 Cal. 209; *Koppikus v. State Capitol Commissioners*, 16 Cal. 248.

4 *Nougues v. Douglass*, 7 Cal. 65.

5 *People v. Pacheco*, 27 Cal. 221.

6 *Franklin v. Board of Examiners*, 23 Cal. 173.

7 *Pattison v. Board of Supervisors of Yuba*, 13 Cal. 175. But see Article XI, Section 18, *ante*.

8 *Hallenbeck v. Hahn*, 2 Neb. 309.

ARTICLE XVII.

LAND, AND HOMESTEAD EXEMPTION.

- § 1. Homesteads.
- § 2. Land monopoly.
- § 3. Lands granted only to actual settlers.

§ 1. The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families.

See Ala. XIV; Ark. IX; Colo. XVIII, 1; Fla. X; Ga. VII; Ill. IV, 33; Kans. XV, 9; Mich. XVI; Nev. IV, 30; N. C. X; Tenn. XI, 11; Tex. XVI, 51; Va. XI; W. Va. VI, 48.

Homesteads.—The constitutional provision which exempts a homestead of a certain quantity is a limitation on the power of the legislature to reduce the exemption below that quantity, but not on the power to increase it.¹ The title to the homestead is vested in the owner, and no allotment by the sheriff is necessary to vest title thereto.² It is the intention of the constitution to protect a family in its honest rights, but not a family neither connected by blood nor by marriage.³

1 David v. David, 56 Ala. 49; Martin v. Hughes, 67 N. C. 233.

2 Lambert v. Kinnery, 74 N. C. 348.

3 Howard v. Marshall, 48 Tex. 471.

Exemption laws.—States may pass exemption laws,¹ but if the exemption is too large, and materially affects the remedies, it is void;² as where a new constitution deprives courts of jurisdiction to sell exempt property.³ Statutes exempting from execution impair the obligation as to prior contracts.⁴ The legislature may exempt real as well as personal property,⁵ but if the law is to enable the holding of large properties rather than to secure the well-being of citizens, it is void.⁶ So, a State cannot enact a law to exempt property if it was liable to seizure and appropriation when the debt was incurred.⁷ A State law exempting a homestead is valid if it is such as sound policy dictates,⁸ although it leaves the debtor no property liable to execution.⁹ Such a law is valid so far as it affects

debts created after its passage, though prior to the declaration of homestead.¹⁰ The subjection of property to execution, which was not so at the time the contract was made, does not impair the obligation of the contract.¹¹ No exemption can be allowed, as against a mortgagee claiming under a mortgage made prior to the law allowing the exemption.¹² An exemption law cannot divest the lien of a judgment and leave no means for the collection of the debt.¹³ So, creating a new exemption by a constitutional provision impairs the obligation of prior contracts.¹⁴ An act making the failure to file for record a declaration of homestead a forfeiture of the homestead right, is not unconstitutional.¹⁵

1 *Planters' Bank v. Sharp*, 6 How. 301; *Von Hoffman v. Quincy*, 4 Wall. 535; *Morse v. Gould*, 11 N. Y. 281.

2 *Edwards v. Kearzey*, 96 U. S. 611; *Grimes v. Byrne*, 2 Minn. 89; *Stephenson v. Osborne*, 41 Miss. 119; *Morse v. Gould*, 11 N. Y. 281; *Lessley v. Phipps*, 49 Miss. 790; *Hill v. Kessler*, 63 N. C. 436; *Jacobs v. Smallwood*, *Ibid.* 112; *Cusic v. Douglass*, 3 Kans. 23.

3 *Hardeman v. Downer*, 39 Ga. 425.

4 *Quackenboss v. Drnks*, 1 Denio, 128; 1 N. Y. 129; *Hawthorne v. Caley*, 2 Wall. 23. But see *contra*, *Mede v. Hand*, 5 Am. Law Reg. N. S. 82; *Rockwell v. Hubbell*, 2 Doug. 197; *Morse v. Gould*, 11 N. Y. 281. And see *Roby v. Boswell*, 23 G.J. 51.

5 *Hill v. Kessler*, 63 N. C. 436; *Jacobs v. Smallwood*, *Ibid.* 112.

6 *Cusic v. Douglas*, 3 Kans. 23.

7 *Penrose v. Erie Can. Co.* 56 Pa. 46; *State v. Bank*, 1 Rich. N. C. 63.

8 *Cusic v. Douglas*, 3 Kans. 23; *Root v. McGrew*, *Ibid.* 215.

9 *Hill v. Kessler*, 63 N. C. 436.

10 *In re Henkel*, 2 Sawy. 305.

11 *Reardon v. Searcy*, 2 Ribb, 202.

12 *Shelor v. Mason*, 2 Rich. N. S. 233.

13 *Gunn v. Barry*, 15 Wall. 610; *Smith v. Morse*, 2 Cal. 524; *Tillotson v. Millard*, 7 Minn. 513; *McKeithan v. Terry*, 64 N. C. 25; *Forsyth v. Marbury*, R. M. Charit. 324. But see *Hardeman v. Downer*, 39 Ga. 425; *In re Kennedy*, 2 Rich. N. S. 116; *Adams v. Smith*, *Ibid.* 228.

14 *Gunn v. Barry*, 15 Wall. 610; *Jones v. Brandon*, 48 Ga. 593.

15 *Noble v. Hook*, 24 Cal. 638.

§ 2. The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

§ 3. Lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

ARTICLE XVIII.

AMENDING AND REVISING THE CONSTITUTION.

- § 1. Proposal of amendments—Submission to vote.
- § 2. Revision—Convention for.

§ 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two-thirds of all the members elected to each of the two Houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon; and it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of this Constitution.

With the yeas and nays taken thereon—Ark. XIII, 1; Fla. XVIII, 1; Ill. XIV, 2; Ind. XVI, 1; Iowa, X, 1; Kans. XIV, 1; La. (IX), 147; Mass. Amend. IX; Mich. XX, 1; Mo. XII, 2; Nev. XVI, 1; N. J. IX, 1; N. Y. XIII, 1; Ohio, XVI, 1; Or. XVII, 1; Pa. X, 1; R. I. XIII, 1; S. C. XV, 1; Tenn. X, 3; Va. XII, 1; W. Va. XII, 2; Wis. XII, 1.

§ 2. Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at such election on the proposition for a Convention shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. The Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election at such place as the Legislature may direct. At a special election to be provided for by law, the Constitution that may be agreed upon by such Convention shall be submitted to the people for their ratification or rejection, in such manner as the Convention may determine. The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution, as may have been ratified by a majority of all the votes cast at such special election to be the Constitution of the State of California.

ARTICLE XIX.

CHINESE.

- § 1. Protection from alien paupers, etc.
- § 2. Corporations prohibited from hiring Chinese.
- § 3. Public works. Chinese not to be employed on.
- § 4. Coolieism prohibited—Removal of Chinese.

§ 1. The Legislature shall prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State, upon failure or refusal to comply with such conditions; *provided*, that nothing contained in this section shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

Hostile legislation.—Hostile and discriminating legislation by a State against persons of any class, sect, creed, or nation, is forbidden by the Fourteenth Amendment to the Federal Constitution. Where a city ordinance acts with special severity upon Chinese prisoners, its enforcement operates as a "cruel and unusual punishment;" and it is in violation of said amendment, which declares that no State shall deny to any person within its jurisdic-

tion the equal protection of the laws. The authority of the board of supervisors of a city is limited by the terms of its charter, and the general supervision of all matters appertaining to the sanitary condition of the county jail is by statute confided to the board of health. A city ordinance providing for cutting off the queues of Chinamen committed to the county jail is unconstitutional.

Ho Ah Kow v. Nunan, 3 Pac. Coast L. J. 413.

§ 2. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

Rights of foreign residents.—The right to reside in a foreign country implies the right to labor there for a living.¹ A State has no power to interfere with or in any way limit the operation of a treaty of the United States. So, the State cannot legislate so as to interfere with the operation of the treaty with China, or limit or deny the privileges or immunities guaranteed by it to the Chinese residents in this country.²

1 *Baker v. City of Portland*, 3 Pac. Coast L. J. 469; *Chapman v. Toy Long*, 4 Sawy.

2 *Baker v. City of Portland*, 3 Pac. Coast. L. J. 472.

§ 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.

Chinese employment.—A State cannot prevent the Chinese from working upon street improvements and public works.

Baker v. City of Portland, 3 Pac. Coast L. J. 472.

§ 4. The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is forever prohibited in this State, and all contracts for coolie labor shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation.

The Government of the United States alone can determine what aliens shall be permitted to land within the United States, and upon what conditions they shall be permitted to remain.

Baker v. City of Portland, 3 Pac. Coast L. J. 472; *Ho Ah Kow v. Nunan*, 3 Pac. Coast L. J. 413.

ARTICLE XX.

MISCELLANEOUS SUBJECTS.

1. Seat of government.
2. Dueling, disabilities arising from.
3. Oath of office.
4. Election and appointment of officers and commissioners.
5. Fiscal year.
6. Suits against State.
7. Marriage contracts, validity of.
8. Separate property of husband and wife.
9. Perpetuities not allowed.
10. Disqualification for office by giving or taking bribe.
11. Exclusion from office, jury, and right of suffrage of certain persons—protection of right of suffrage.
12. Residence, when absence not to affect.
13. Plurality vote to elect.
14. State board of health.
15. Mechanic's lien.
16. Term of office, duration of.
17. Eight hours a legal day's labor.
18. Sex not a disqualification for business.
19. Payment of expenses of convention.
20. Election of officers—Term, when commences.

§ 1. The City of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each House, may provide, submitting the question of change to the people.

Ky. IX, 1; La. VI, 131.

§ 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weap-

ons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

Ala. IV, 35; Ark. XIX, 2; Colo. XII, 12; Conn. VI, 3; Ga. II, 5; Ill. XIII, 23; Ind. II, 7; Iowa, I, 5; Kans. II, 5; Ky. VIII, 20; La. VI, 126; Md. III, 41; Mich. VII, 8; Miss. I, 27; Mo. XIV, 3; Nev. XV, 3; N. C. XIV, 2; Ohio, XV, 5; ; Or. II, 9; Pa. XII, 3; S. C. VIII, 8; Tenn. IX, 3; Tex. XVI, 4; Va. III, 1; W. Va. IV, 10; Wis. XIII, 2.

§ 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

U. S. VI, 3; Ala. XV, 1; Ark. XIX, 20; Del. VIII; Ind. XV, 4; Iowa, XI, 5; Kans. XV, 2; La. VI, 100; Me. IX, 1; Minn. IV, 23; Miss. XII, 26; Neb. XIV, 1; N. J. IV, 8; Ohio, XV, 7; Or. XV, 3; Tex. XVI, 1; Wis. IV, 23.

And see Colo. XII, 8; Conn. X, 1; Fla. XVII, 10; Ga. II, 4; Ill. IV, 5; Ky. VIII, 1; Md. I, 6; Mass. VI, 1; Mich. XVI, 1; Mo. IV, 15; Nev. XV, 2; N. H. Pt. I, 84; N. Y. XII, 1; N. C. II, 24; Pa. VII, 1; R. I. IX, 3; S. C. II, 30; Tenn. X, 2; Vt. II, 29; Va. III, 6; W. Va. VI, 16.

Oath of office.—The terms "office" and "public trust," as used in this section, have relation only to such duties and responsibilities as are of a public nature.¹ Test-oaths of attorneys not obnoxious to this section.²

1 *Ex parte Yale*, 24 Cal. 241.

2 *Cohn v. Wright*, 22 Cal. 293.

Constitutionality of statutes.—It is from this clause that courts derive their power to declare an enactment of the legislature unconstitutional.¹ They will not exercise their prerogative except at the instance of those whose rights are injured affirmatively;² nor will they consider the unconstitutionality of a law collaterally;³ nor on summary motion;⁴ nor declare a law void because it conflicts with some undefined right not secured by a written constitution;⁵ nor pass on the constitutionality of a statute of another State.⁶ Courts have power to declare a law unconstitutional, but their power is to be exercised with great caution and in no doubtful case,⁷ as every presumption is in favor of their constitutionality,⁸ the burden of proof being on him who asserts their unconstitutionality.⁹ It is the duty of courts to interpret statutes and obey them,¹⁰ and where a provision is susceptible of two constructions, that which will sustain its validity is to be adopted.¹¹ To declare an act of the legislature unconstitutional, its provisions must be found in conflict with some prohibition of the State or Federal Constitution, expressed or clearly implied,¹² manifestly repugnant,¹³ and plainly in contravention.¹⁴ Or that they are in conflict with some vested right secured by some constitutional guaranty, or protected by principles of universal justice.¹⁵ They must give the law its full force and meaning rather than one involving its unconstitutionality.¹⁶ The constitutionality of statutes is to be tested by the limitation imposed on the legislative power by the State constitution, while acts of Congress are to be tested by the grant of power conferred in the Federal Constitution;¹⁷ but legislative acts in undoubted conflict with the constitution are void, and it is the duty of courts to so declare them;¹⁸ but nothing short of that will justify courts in so doing.¹⁹ The constitutionality of a law is not to be called in question if there are any other grounds on which to base a judgment,²⁰ or unless absolutely necessary and imperatively required.²¹ When an act can be construed so as to avoid a conflict and give it the force of law, it will be done.²²

1 *Emerick v. Harris*, 1 Binn. 416. And see *Eakins v. Raub*, 12 Serg. & R. 353; *Winter v. Jones*, 10 Ga. 190.

2 *Williamson v. Carlton*, 51 Me. 449.

3 *Hoover v. Wood*, 9 Ind. 286; *State v. Rich* 20 Mo. 393; *State v. Snow*, 3 R. I. 64.

4 *Brien v. Clay*, 1 E. D. Smith, 649.

- 5 *People v. Gallagher*, 4 Mich. 244.
- 6 *Hunt v. Hunt*, 72 N. Y. 217.
- 7 *State v. Brennan*, 25 Conn. 299; *Trustees of Bishop's Fund v. Rider*, 13 Conn. 93; *M. & C. R. R. Co. v. Little*, 45 Ga. 370; *State v. Robinson*, 1 Kans. 17; *Tyler v. People*, 8 Mich. 320; *Hartford Br. Co. v. Union F. Co.* 29 Conn. 210; *Chicago & C. Co. v. Smith*, 62 Ill. 268; *Brown v. Burzan*, 24 Ind. 194; *Blair v. Ridgely*, 41 Mo. 63; *Rich v. Flanders*, 39 N. H. 304; *Speer v. School Directors*, 50 Pa. St. 150.
- 8 *Cotton v. Commrs. of Leon Co.* 6 Fla. 610; *Boston v. Clemens*, 16 Ga. 102; *Cutts v. Hardee*, 38 Ga. 350; *Gormly v. Taylor*, 44 Ga. 76; *Allison v. Thomas*, *Ibid.* 640; *Lafayette v. Jenners*, 10 Ind. 70; *Morrison v. Springer*, 15 Iowa, 304.
- 9 *Sadler v. Langham*, 34 Ala. 311; *Dorman v. State*, 56 Ind. 454.
- 10 *Flint Riv. S. Co. v. Foster*, 5 Ga. 194.
- 11 *Roosevelt v. Goddard*, 52 Barb. 533; *Santo v. State*, 2 Clarke, 165; *Colwell v. May's Landing & C. Co.* 4 Green, 245; *Cutts v. Hardee*, 38 Ga. 350; *People v. S. F. & C. Co.* 35 Cal. 606; *Chance v. Marion Co.* 64 Ill. 66.
- 12 *People v. Mahaney*, 13 Mich. 481; *State v. Snow*, 3 R. L. 64; *Butler's Appeal*, 73 Pa. St. 448.
- 13 *Bourland v. Hildreth*, 26 Cal. 162; *People v. Sassovich*, 29 Cal. 480; *Inkster v. Carver*, 16 Mich. 484.
- 14 *Beall v. Beall*, 8 Ga. 210; *Carey v. Giles*, 9 Ga. 253.
- 15 *Galland v. Lewis*, 26 Cal. 47.
- 16 *Iowa & C. Co. v. Webster Co.* 21 Iowa, 221.
- 17 *Ex parte Mabry*, 5 Tex. Ct. App. 93; *Logan v. State*, *Ibid.* 306. But see *Nichols v. McKee*, 68 N. C. 429.
- 18 *Bank of St. Mary's v. State*, 12 Ga. 475; *Cutts v. Hardee*, 38 Ga. 350; *Eakins v. Raub*, 12 Serg. & R. 330.
- 19 *Pennsylvania R. R. Co. v. Riblet*, 66 Pa. St. 164.
- 20 *Armstrong v. Jones*, 34 Ga. 309.
- 21 *Taylor v. Flint*, 35 Ga. 124; *Cutts v. Hardee*, 38 Ga. 350; *Inkster v. Carver*, 16 Mich. 484.
- 22 *Newland v. Marsh*, 19 Ill. 376.

§ 4. All officers or Commissioners whose election or appointment is not provided for by this Constitution, and all officers or Commissioners whose offices or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

Va. VI, 20.

Election of officers.—This section does not prohibit from conferring on a voluntary association, not citizens or electors, the power to elect a person to fill an office created by the legislature. The legislature may confer the power to elect a fire commissioner upon a board of fire

underwriters, and the appointment may be made by a majority vote.¹ The legislature may alter or abridge the term of office of legislative creation.² A pilot in the port of San Francisco is an officer.³

1 In re Bulger, In re Merrill, 45 Cal. 553.

2 People v. Haskell, 5 Cal. 357.

3 Palmer v. Woodbury, 14 Cal. 43.

§ 5. The fiscal year shall commence on the first day of July.

Colo. X, 1; Nev. IX, 1; S. C. VIII, 13.

Fiscal quarter means one-fourth of a calendar year.¹ An act legalizing assessments for taxes for the fiscal year ending on the "first day of March" is not void because the fiscal year commences on the first day of July.²

1 Opin. of Judges, 5 Neb. 566.

2 People v. Todd, 23 Cal. 181.

§ 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

Ala. I, 16; Ark. I, 17; Del. I, 9; Pa. IX, 11; Tenn. I, 17.

§ 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

§ 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

See Fla. V, 25; Ga. VII, 1; Kans. XV, 6; Mich. XVI, 5; Miss. I, 16; Nev. IV, 31; N. C. X, 6; Or. XV, 5; S. C. XIV, 8; Tex. XVI, 15; W. Va. VI, 49.

Separate property.—The term "separate property" is used in its common-law sense, and means an estate held both in its use and in its title for exclusive use.¹ The word "separate" neither enlarges nor limits the wife's right to the property mentioned, but merely distinguishes it from her common property.² Statutes providing that the wife cannot mortgage her separate real estate unless her husband joins in the conveyance, and operating in future,³ or requiring a deed conveying the separate property of the wife to be signed by the husband as well as the wife,⁴ or validating powers of attorney theretofore made by married women for the sale of their separate estate, are constitutional.⁵ The capacity of the wife to hold separate property is created by the constitution. Her title depends upon the mode of acquisition.⁶ This section is in affirmance of statutes existing at the time of the adoption of the constitution, and does not abrogate their provisions.⁷ Either the common property or the separate property of the wife may be levied on, on a judgment obtained on a note made jointly by husband and wife, executed for the protection of the separate property of the wife.⁸ The "increase" does not include the hire of separate personal property.⁹

1 George v. Ransom, 15 Cal. 322; Kraemer v. Kraemer, 52 Cal. 304.

2 Dow v. G. & C. S. M. Co. 31 Cal. 630.

3 Harrison v. Brown, 16 Cal. 287.

4 Dow v. G. & C. S. M. Co. 31 Cal. 630.

5 Dentzell v. Waldie, 30 Cal. 138.

6 Salover v. Amer. Rus. Com. Co. 7 Cal. 266.

7 Bender v. Meyer, 55 Ala. 576.

8 Grant v. Whittlesey, 42 Tex. 320.

9 Carr v. Tucker, 42 Tex. 330.

§ 9. No perpetuities shall be allowed except for eleemosynary purposes.

Nev. XV, 4.

§ 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Fla. V, 9; Ind. II, 6; Ky. VIII, 3; Mass. VI, 2; Mo. II, 15; Nev. IV, 10; R. I. IX, 2; Tex. XVI, 41; Tenn. X, 3.

Bribery.—Where a candidate for office publicly pledges himself before the election to perform the duties of the office for less than the compensation established by law, and by reason thereof a sufficient number of voters were induced to vote for him to secure him the election, his election is void,¹ and the title to the office is invalid.² A vote given for a public office, in consideration of his promise, in case he should be elected, to donate a sum of money or other valuable thing to a third party, is void.³ The information must show that the voters influenced by such offer were tax-payers of the county, or would otherwise be benefited by the performance of the promise.⁴ A conviction of the offense of bribing an elector to vote for him does not disqualify a sheriff from exercising the duties of his office.⁵

1 State v. Collier, Sup. Ct. Mo.; 3 Pac. Coast L. J. 394; 19 Alb. L. J. 514; State v. Purdy, 36 Wis. 213.

2 State v. Collier, 3 Pac. Coast L. J. 396.

3 Tucker v. Aiken, 7 N. H. 140; Alvord v. Collin, 20 Pick. 423.

4 State v. Church, 5 Or. 375.

5 Commonwealth v. Shaver, 3 Watts & S. 338.

§ 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes.¹ The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.²

1 Del. IV, 1; Miss. XII, 2; Tenn. IX, 2; Tex. XII, 2.

2 Ala. I, 36; Ark. I, 19; Conn. VI, 6; Fla. IV, 24; Ky. VIII, 4; La. 103; Nev. IV, 27; Or. II, 8; S. C. I, 33; Tex. XII, 2.

§ 12. Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person.

ARTICLE XXI.

BOUNDARY.

§ 1. The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a southeasterly direction, to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast.

ARTICLE XXII.

SCHEDULE.

- § 1. Laws to remain in force.
2. Recognizances, obligations, etc., unaffected.
- § 3. Courts, save justices' and police courts, abolished—transfer of records, books, etc.
- § 4. State printing.
5. Ballots to be printed.
6. Registers, poll-books, etc., to be furnished.
7. Who entitled to vote for Constitution.
8. Canvass of returns of vote.
9. Computing returns of vote.
- § 10. Terms of officers first elected.
11. Laws applicable to judicial system.
- § 12. Constitution, when to take effect.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

§ 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature.

See *Hills v. Chicago*, 66 Ill. 86; *Otis v. Chicago*, 62 Ill. 296; *Johnson v. Sedberry*, 65 N. C. 1.

§ 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution, to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality thereof, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

§ 3. All Courts now existing, save Justices' and Police Courts, are hereby abolished; and all records, books, papers, and proceedings from such Courts, as are abolished by this Constitution, shall be transferred on the first day of January, eighteen hundred and eighty, to the Courts provided for in this Constitution; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

§ 4. The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine,

cause to be printed at the State Printing Office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the post-office address of each registered voter; *provided*, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of the State. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

§ 5. The Superintendent of Printing of the State of California shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "For the new Constitution." He shall likewise cause to be so printed and delivered to said Clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "Against the new Constitution." The Secretary of State is hereby authorized and required to furnish the Superintendent of State Printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

§ 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable registers, poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; *provided*, that the duties in this and the preceding section imposed upon the Clerk of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of Voters for said city and county.

§ 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

§ 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the City and County of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received,

th. Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from time to time until all the returns are received, or until the second Monday after said election, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

§ 9. The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election is in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the days hereinafter specified.

§ 10. In order that future elections in this State shall conform to the requirements of this Constitution, the terms of all officers elected at the first election under the same

shall be, respectively, one year shorter than the terms as fixed by law or by this Constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen, after the adoption of this Constitution, shall be elected at the time and in the manner now provided by law. Judicial officers and the Superintendent of Public Instruction shall be elected at the time and in the manner that State officers are elected.

§ 11. All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation.

§ 12. This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers, the commencement of their terms of office, and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

J. P. HOGE,

President.

Attest: EDWIN F. SMITH, Secretary.

A. R. ANDREWS,
JAMES J. AYERS,
CLITUS BARBOUR,
EDWARD BARRY,
JAMES N. BARTON,
C. J. BEERSTECHEE,
ISAAC S. BELCHER,
PETER BELL,
MARION BIGGS,
E. T. BLACKMER,
JOSEPH C. BROWN,
SAM'L B. BURT,
JOSIAH BOUCHER,
JAMES CAPLES,
AUG. H. CHAPMAN,
J. M. CHARLES,
JOHN D. CONDON,
C. W. CROSS,
HAMLET DAVIS,
JAS. E. DEAN,
P. T. DOWLING,
LUKE D. DOYLE,
W. L. DUDLEY,
JONATHAN M. DUDLEY,
PRESLEY DUNLAP,
JOHN EAGON,
THOMAS H. ESTEY,
HENRY EDGERTON,
M. M. ESTEE,
EDWARD EVEY,
J. A. FILCHER,
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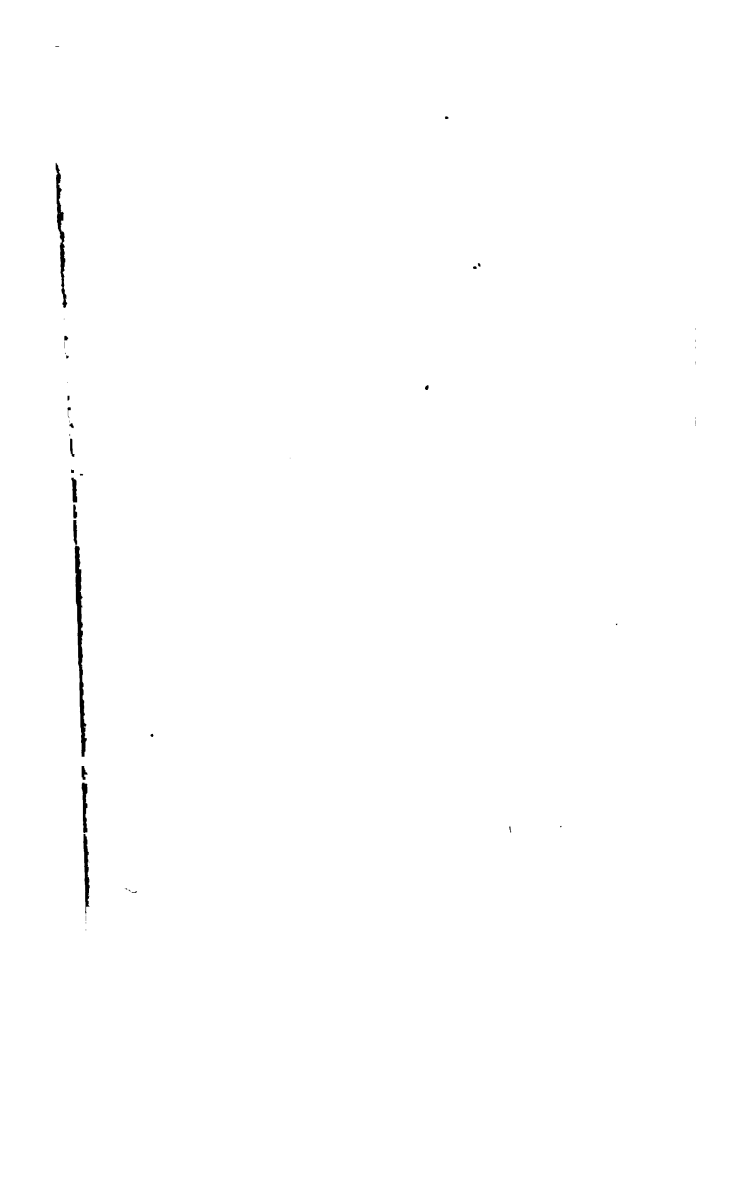
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